IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
SOUTHCROSS ENERGY PARTNERS, L.P., *et al.*,	)	Case No. 19-10702 (MFW)
	)	Jointly Administered
Debtors.[1]	)	**Re: D.I. 816 & 826**

NOTICE OF FILING AMENDED PLAN SUPPLEMENT TO THE DEBTORS' FIRST AMENDED CHAPTER 11 PLAN FOR SOUTHCROSS ENERGY PARTNERS L.P. AND ITS AFFILIATED DEBTORS

PLEASE TAKE NOTICE that, on April 1, 2019, the above-captioned debtors and debtors in possession (collectively, the "**Debtors**") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "**Court**").

PLEASE TAKE FURTHER NOTICE that, on January 7, 2020, the Court entered the *Order (I) Approving the Debtors' Continued Solicitation of the Amended Chapter 11 Plan, (II) Approving the Adequacy of the Disclosure Statement Supplement in Connection with the Amended Chapter 11 Plan, (III) Establishing Certain Deadlines and Procedures in Connection with Confirmation of the Amended Chapter 11 Plan, and (IV) Granting Related Relief* [D.I. 814], after which, on January 7, 2020, the Debtors filed the solicitation version of the *First Amended Chapter 11 Plan for Southcross Energy Partners L.P. and its Affiliated Debtors* [D.I. 816] (as amended, the "**Plan**").[2]

[1] The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors' mailing address is 1717 Main Street, Suite 5300, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

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PLEASE TAKE FURTHER NOTICE that, on January 9, 2020, the Debtors filed the *Notice of Filing Plan Supplement to the Debtors' First Amended Chapter 11 Plan for Southcross Energy Partners L.P. and its Affiliated Debtors* [D.I. 826] (the "**Original Plan Supplement**").

PLEASE TAKE FURTHER NOTICE that attached hereto are the substantially final forms of the documents set forth below, which form an amended supplemental appendix to the Plan (collectively, the "**Amended Plan Supplement**"):[3]

Exhibit	Plan Supplement Document
A	Amended Constituent Documents
B	New LLC Agreement
C	Proposed Members of New Board and Officers of Reorganized Debtors
D	Employment Agreements for Officers
E	Short-Term Incentive Performance Plan for 2019
F	Implementation Memorandum
G	Exit Credit Facility Agreement

PLEASE TAKE FURTHER NOTICE that the Amended Plan Supplement replaces the Original Plan Supplement in its entirety.

PLEASE TAKE FURTHER NOTICE that certain documents, or portions thereof, contained in the Amended Plan Supplement remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. Subject to the terms and conditions set forth in the Plan, the Debtors reserve all rights to amend, modify, or supplement the Amended Plan Supplement, and any of the documents and designations contained therein, at any time prior to the Confirmation Hearing, or any such later date as may be permitted by the Plan or by order of the Court. To the extent material amendments or modifications are made to any of the documents contained in the Amended Plan Supplement, the Debtors will file a blackline of such document(s) with the Court.

PLEASE TAKE FURTHER NOTICE that the forms of the documents contained in the Amended Plan Supplement are integral to, and are considered part of, the Plan. If the Plan is approved, the documents contained in the Amended Plan Supplement will be approved by the Court pursuant to the Confirmation Order.

[3] The attached Amended Plan Supplement documents contemplate a reorganization transaction under the Plan. However, if the Credit Bid Transaction is implemented, the Amended Plan Supplement documents (as applicable) shall remain substantially in the same form as the attached documents, but revised to refer to NewCo instead of any Reorganized Debtor(s).

Obtaining Additional Information

Copies of all documents referenced herein and filed with the Court are available free of charge on the Debtors' case information website, located at *http://www.kccllc.net/southcrossenergy* or can be requested by email at SouthcrossInfo@kccllc.com.

Important Dates and Deadlines[4]

1. **Plan Objection Deadline**. The deadline to object to the confirmation of the Plan is **6:00 p.m. on January 21, 2020 (prevailing Eastern Time)**.

2. **Confirmation Hearing**. A hearing to consider the confirmation of the Plan will be held before the Court on **January 27, 2020 at 10:30 a.m. (prevailing Eastern Time)** or such other date and time as determined by the Court, at 824 North Market Street, Wilmington, Delaware 19801.

[Remainder of This Page Intentionally Left Blank]

[4] The following dates and deadlines may be subject to amendment by the Debtors (in consultation with the Ad Hoc Group) or the Court.

Dated: January 14, 2020
Wilmington, Delaware

Respectfully submitted,

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Joseph C. Barsalona II

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-and-

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Counsel to the Debtors and Debtors in Possession

Exhibit A

Amended Constituent Documents

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement") is entered into on this [●] day of January, 2020, by and among Southcross Energy Partners LLC, a Delaware limited liability company (the "Company") and Southcross Energy Partners, GP, LLC, a Delaware limited liability company (the "GP").

RECITALS

WHEREAS, the Company and the GP are each limited liability companies duly organized and validly existing under the laws of the State of Delaware;

WHEREAS, pursuant to the transactions contemplated by this Agreement and on the terms and subject to the conditions set forth herein, the GP, in accordance with the Delaware Limited Liability Company Act (the "DLLCA"), shall merge with and into the Company (the "Merger") which shall continue as the surviving entity in such merger (the "Surviving Company");

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

THE MERGER

Section 1.01 Merger. In accordance with Section 18-209 of the DLLCA, at the Effective Time (as defined below) of the Merger, the GP shall be merged with and into the Company, which shall continue as the Surviving Company, and the Surviving Company shall continue its existence under the laws of the State of Delaware.

Section 1.02 Effective Time. The parties hereto shall cause a Certificate of Merger, or other such documents as are required, to be filed as promptly as possible with the Secretary of State of the State of Delaware (the "Delaware Certificate"). The Merger shall become effective upon the date of acceptance and filing of the Delaware Certificate (hereafter referred to as the "Effective Time").

ARTICLE II

EFFECT ON OWNERSHIP INTERESTS

Section 2.01 Effect on Ownership Interests. At the Effective Time, by virtue of the Merger and without any action on the part of the Company or the GP: (a) all ownership interests of the Company issued and outstanding immediately prior to the Effective Time shall remain outstanding following the consummation of the Merger and (b) all ownership interests of the GP

shall automatically be canceled, extinguished and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor.

ARTICLE III

EFFECTS OF MERGER

Section 3.01 Effects of Merger. From the Effective Time, the Merger shall have the effects provided by the DLLCA. Without limiting the generality of the foregoing, upon the Effective Time, the separate existence of the GP shall cease, the GP shall be merged with and into the Company as the Surviving Company, and the Surviving Company, without any further deed or action, shall possess all assets and property of every description, and every interest therein, wherever located, and all rights, privileges, immunities, powers, franchises and authority (of a public as well as of a private nature), of the GP and all obligations belonging to or due the GP. Title to any real estate, or any interest therein, vested in each of the Surviving Company and the GP shall not revert or in any way be impaired by reason of the Merger. The Surviving Company shall be liable for all of the obligations of the GP. Any claim existing, or action or proceeding pending, by or against either the Company or the GP may be prosecuted to judgment, with right of appeal, as if the Merger had not taken place or the Surviving Company may be substituted in the place of the GP. All rights of creditors of each of the GP and the Company shall be preserved unimpaired, and all liens upon the property of either the Company or the GP shall be preserved unimpaired, but only on the property affected by such liens immediately before the Effective Time. Whenever a conveyance, assignment, transfer, deed or other instrument or act is necessary to vest property or rights in the Surviving Company, the officers of the GP shall execute, acknowledge and deliver such instruments and do such acts. For such purposes, the existence of the GP and the authority of its respective officers is continued, notwithstanding the Merger.

ARTICLE IV

MISCELLANEOUS

Section 4.01 Entire Agreement. This Agreement, together with the Certificate of Merger, contain the entire agreement and understanding of the parties hereto, and supersedes all prior agreements and undertakings oral or written, express or implied, between such parties, with respect to the subject matter hereof.

Section 4.02 No Third Party Rights. This Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder.

Section 4.03 Descriptive Headings. The headings herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

Section 4.04 Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefore in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 4.05 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

Section 4.06 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Delaware.

Section 4.07 Execution. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall together constitute one and the same agreement. This Agreement may be executed by any party by delivery of a facsimile or electronic mail signature, which signature shall have the same force as an original signature. Any party which delivers a facsimile or electronic mail signature shall promptly thereafter deliver an originally executed signature to the other parties; provided, however, that the failure to deliver an original signature page shall not affect the validity of any signature delivered by facsimile or electronic mail. Facsimile or photocopied or electronic mail signatures shall be deemed to be the functional equivalent of an original for all purposes.

[Remainder of page intentionally blank; signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first stated above by their duly authorized signatories.

SOUTHCROSS ENERGY PARTNERS LLC

By: /s/ _____
Name:
Title: Authorized Signatory

SOUTHCROSS ENERGY PARTNERS, GP, LLC

By: /s/ _____
Name:
Title: Authorized Signatory

STATE OF DELAWARE

CERTIFICATE OF MERGER

Pursuant to Title 6, Section 18-209 of the Delaware Limited Liability Company Act, Southcross Energy Partners LLC, a Delaware limited liability company (the "Company"), hereby certifies to the following information relating to the merger of Southcross Energy Partners, GP, LLC, with and into the Company (the "Merger"):

FIRST: The names and states of formation of the constituent companies participating in the Merger (the "Constituent Companies") are as follows:

Name	State of Formation
Southcross Energy Partners LLC	Delaware
Southcross Energy Partners, GP, LLC	Delaware

SECOND: The Agreement and Plan of Merger, dated as of January [●], 2020, (the "Merger Agreement"), by and among the Constituent Companies has been approved, adopted, certified, executed and acknowledged by each of the Constituent Companies.

THIRD: The Company shall be the surviving company following the Merger.

FOURTH: The name of the Company following the Merger shall be "Southcross Energy Partners LLC".

FIFTH: The merger is to become effective upon the filing of this Certificate of Merger with the Secretary of State of Delaware.

SIXTH: The Merger Agreement is on file at [●], the place of business of the Company.

SEVENTH: A copy of the Merger Agreement will be furnished by the Company on request, without cost, to any member of the Constituent Companies.

IN WITNESS WHEREOF, the Company has caused this certificate to be signed by an authorized person on [●] of January, 2020.

SOUTHCROSS ENERGY PARTNERS LLC

By: /s/ _____
Name:
Title: Authorized Signatory

CERTIFICATE OF CONVERSION
FROM A LIMITED PARTNERSHIP TO A
LIMITED LIABILITY COMPANY PURSUANT TO
SECTION 18-214 OF THE LIMITED LIABILITY ACT

This Certificate of Conversion, dated [_____], has been duly executed and is being filed by the undersigned, an authorized person, in accordance with the provisions of Section 18-214 of the Delaware Limited Liability Company Act (the "***Certificate of Conversion***"). The undersigned does hereby certify as follows:

1. The jurisdiction where the limited partnership first formed is Delaware.

2. The jurisdiction of the limited partnership immediately prior to filing this Certificate of Conversion is Delaware.

3. The limited partnership was formed on April 12, 2012.

4. The name of the limited partnership is "Southcross Energy Partners, L.P."

5. The name of the limited liability company as set forth in the Certificate of Formation is "Southcross Energy Partners LLC".

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Conversion on the date first above written.

By: _____
Name:
Title: Authorized Person

CERTIFICATE OF FORMATION
OF
SOUTHCROSS ENERGY PARTNERS LLC

This Certificate of Formation of Southcross Energy Partners LLC (the "***Company***"), dated [_____], has been duly executed and is being filed by the undersigned, an authorized person, in accordance with the provisions of the Delaware Limited Liability Company Act (the "***Certificate of Formation***"). The undersigned does hereby certify as follows:

6. The name of the limited liability company is Southcross Energy Partners LLC.

7. The name and address of the registered agent for service of process on the Company are as follows:

Corporation Service Company
251 Little Falls Drive,
Wilmington, Delaware 19808

8. The Company shall not issue any non-voting equity securities to the extent prohibited by Section 1123 of Title 11 of the United States Code (the "***Bankruptcy Code***") as in effect on the date of filing of this Certificate of Formation with the Secretary of State of the State of Delaware; provided, however, that the foregoing (a) shall have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) shall have such force and effect, if any, only for so long as such section of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Formation on the date first above written.

By: _____
Name:
Title: Authorized Person

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
SOUTHCROSS ENERGY FINANCE CORP.

[_____]

A. The original Certificate of Incorporation of the corporation was filed with the Secretary of State of Delaware on the 31st day of October, 2013.

B. This Amended and Restated Certificate of Incorporation (this "Amended and Restated Certificate of Incorporation") amends and restates the original Certificate of Incorporation of the Corporation in its entirety.

C. The Certificate of Incorporation of the Corporation, upon the filing of this Amended and Restated Certificate of Incorporation, shall read as follows:

FIRST. The name of the corporation is Southcross Energy Finance Corp.

SECOND. The address of the corporation's registered office in the State of Delaware is 251 Little Falls Drive, in the City of Wilmington, County of New Castle, 19808. The name of its registered agent at such address is The Corporation Trust Company.

THIRD. The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH. The total number of shares of stock which the corporation shall have authority to issue is 1,000. All such shares are to be Common Stock, par value $0.01 per share, and are to be of one class.

FIFTH. Unless and except to the extent that the bylaws of the corporation shall so require, the election of directors of the corporation need not be by written ballot.

SIXTH. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors of the corporation is expressly authorized to make, alter and repeal the bylaws of the corporation.

SEVENTH. A director of the corporation shall not be liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director of the corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

EIGHTH. The corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of any nature conferred upon stockholders, directors or any other persons by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this article.

NINTH. The Corporation shall not issue any non-voting equity securities to the extent prohibited by Section 1123 of Title 11 of the United States Code (the "***Bankruptcy Code***") as in effect on the date of filing of this Amended and Restated Certificate of Formation with the Secretary of State of the State of Delaware; provided, however, that the foregoing (a) shall have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) shall have such force and effect, if any, only for so long as such section of the Bankruptcy Code is in effect and applicable to the Corporation, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

IN WITNESS WHEREOF, the Corporation has duly executed this Amended and Restated Certificate of Incorporation on the date first above written.

By: _____
Name:
Title: Authorized Officer

CERTIFICATE OF CANCELLATION

OF

SOUTHCROSS ENERGY PARTNERS GP, LLC

This Certificate of Cancellation is being filed pursuant to Section 18-203 of the Delaware Limited Liability Company Act.

1. The name of the limited liability company is Southcross Energy Partners GP, LLC (the "Company").

2. The Certificate of Formation of the Company was filed on April 12, 2012.
3.
4. This Certificate of Cancellation shall be effective upon filing with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Cancellation this ___ day of [_____].

SOUTHCROSS ENERGY PARTNERS GP, LLC

By:_____
Name:
Title: Authorized Signatory

SECOND AMENDED AND RESTATED CERTIFICATE OF FORMATION
OF
SOUTHCROSS ALABAMA PIPELINE LLC

This Second Amended and Restated Certificate of Formation of Southcross Alabama Pipeline LLC (the "***Company***"), dated [_____], has been duly executed and is being filed by the undersigned, an authorized person, in accordance with the provisions of Section 18-208 of the Delaware Limited Liability Company Act, as amended from time to time, to amend and restate the Certificate Formation of the Company, which was originally filed with the Office of the Secretary of State of the State of Delaware on December 20, 2002 (the "***Certificate***"). The undersigned does hereby certify as follows:

The Certificate is hereby amended and restated in its entirety to read as follows:

1. The name of the limited liability company is Southcross Alabama Pipeline LLC.

2. The name and address of the registered agent for service of process on the Company are as follows:

   Corporation Service Company
   251 Little Falls Drive
   Wilmington, Delaware 19808

3. The Company shall not issue any non-voting equity securities to the extent prohibited by Section 1123 of Title 11 of the United States Code (the "***Bankruptcy Code***") as in effect on the date of filing of this Second Amended and Restated Certificate of Formation with the Secretary of State of the State of Delaware; provided, however, that the foregoing (a) shall have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) shall have such force and effect, if any, only for so long as such section of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

IN WITNESS WHEREOF, the undersigned has duly executed this Second Amended and Restated Certificate of Formation on the date first above written.

By: _____
Name:
Title: Authorized Person

SECOND AMENDED AND RESTATED CERTIFICATE OF FORMATION
OF
SOUTHCROSS DELTA PIPELINE LLC

This Second Amended and Restated Certificate of Formation of Southcross Delta Pipeline LLC (the "***Company***"), dated [_____], has been duly executed and is being filed by the undersigned, an authorized person, in accordance with the provisions of Section 18-208 of the Delaware Limited Liability Company Act, as amended from time to time, to amend and restate the Certificate Formation of the Company, which was filed originally filed with the Office of the Secretary of State of the State of Delaware on January 26, 2009 (the "***Certificate***"). The undersigned does hereby certify as follows:

The Certificate is hereby amended and restated in its entirety to read as follows:

1. The name of the limited liability company is Southcross Delta Pipeline LLC.

2. The name and address of the registered agent for service of process on the Company are as follows:

   Corporation Service Company
   251 Little Falls Drive
   Wilmington, Delaware 19808

3. The Company shall not issue any non-voting equity securities to the extent prohibited by Section 1123 of Title 11 of the United States Code (the "***Bankruptcy Code***") as in effect on the date of filing of this Second Amended and Restated Certificate of Formation with the Secretary of State of the State of Delaware; provided, however, that the foregoing (a) shall have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) shall have such force and effect, if any, only for so long as such section of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

IN WITNESS WHEREOF, the undersigned has duly executed this Second Amended and Restated Certificate of Formation on the date first above written.

By: _____
Name:
Title: Authorized Person

AMENDED AND RESTATED CERTIFICATE OF FORMATION
OF
SOUTHCROSS ENERGY LP LLC

This Amended and Restated Certificate of Formation of Southcross Energy LP LLC (the "***Company***"), dated [_____], has been duly executed and is being filed by the undersigned, an authorized person, in accordance with the provisions of Section 18-208 of the Delaware Limited Liability Company Act, as amended from time to time, to amend and restate the Certificate Formation of the Company, which was originally filed with the Office of the Secretary of State of the State of Delaware on June 12, 2009 (the "***Certificate***"). The undersigned does hereby certify as follows:

The Certificate is hereby amended and restated in its entirety to read as follows:

1. The name of the limited liability company is Southcross Energy LP LLC.

2. The name and address of the registered agent for service of process on the Company are as follows:

   Corporation Service Company
   251 Little Falls Drive
   Wilmington, Delaware 19808

3. The Company shall not issue any non-voting equity securities to the extent prohibited by Section 1123 of Title 11 of the United States Code (the "***Bankruptcy Code***") as in effect on the date of filing of this Amended and Restated Certificate of Formation with the Secretary of State of the State of Delaware; provided, however, that the foregoing (a) shall have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) shall have such force and effect, if any, only for so long as such section of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

IN WITNESS WHEREOF, the undersigned has duly executed this Amended and Restated Certificate of Formation on the date first above written.

By: _____
Name:
Title: Authorized Person

AMENDED AND RESTATED CERTIFICATE OF FORMATION
OF
SOUTHCROSS ENERGY GP LLC

This Amended and Restated Certificate of Formation of Southcross Energy GP LLC (the "***Company***"), dated [_____] has been duly executed and is being filed by the undersigned, an authorized person, in accordance with the provisions of Section 18-208 of the Delaware Limited Liability Company Act, as amended from time to time, to amend and restate the Certificate Formation of the Company, which was originally filed with the Office of the Secretary of State of the State of Delaware on June 12, 2009 (the "***Certificate***"). The undersigned does hereby certify as follows:

The Certificate is hereby amended and restated in its entirety to read as follows:

1. The name of the limited liability company is Southcross Energy GP LLC.

2. The name and address of the registered agent for service of process on the Company are as follows:

   Corporation Service Company
   251 Little Falls Drive
   Wilmington, Delaware 19808

3. The Company shall not issue any non-voting equity securities to the extent prohibited by Section 1123 of Title 11 of the United States Code (the "***Bankruptcy Code***") as in effect on the date of filing of this Amended and Restated Certificate of Formation with the Secretary of State of the State of Delaware; provided, however, that the foregoing (a) shall have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) shall have such force and effect, if any, only for so long as such section of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

IN WITNESS WHEREOF, the undersigned has duly executed this Amended and Restated Certificate of Formation on the date first above written.

By: _____
Name:
Title: Authorized Person

SECOND AMENDED AND RESTATED CERTIFICATE OF FORMATION
OF
SOUTHCROSS ENERGY OPERATING, LLC

This Second Amended and Restated Certificate of Formation of Southcross Energy Operating, LLC (the "***Company***"), dated [_____], has been duly executed and is being filed by the undersigned, an authorized person, in accordance with the provisions of Section 18-208 of the Delaware Limited Liability Company Act, as amended from time to time, to amend and restate the Certificate of Formation of the Company, which was originally filed with the Office of the Secretary of State of the State of Delaware on April 12, 2012 (the "***Certificate***"). The undersigned does hereby certify as follows:

The Certificate is hereby amended and restated in its entirety to read as follows:

1. The name of the company is Southcross Energy Operating, LLC.

2. The name and address of the registered agent for service of process on the Company are as follows:

   Corporation Service Company
   251 Little Falls Drive
   Wilmington, Delaware 19808

3. The Company shall not issue any non-voting equity securities to the extent prohibited by Section 1123 of Title 11 of the United States Code (the "***Bankruptcy Code***") as in effect on the date of filing of this Second Amended and Restated Certificate of Formation with the Secretary of State of the State of Delaware; provided, however, that the foregoing (a) shall have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) shall have such force and effect, if any, only for so long as such section of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

IN WITNESS WHEREOF, the undersigned has executed this Second Amended and Restated Certificate of Formation on the date first above written.

By: _____
Name:
Title: Authorized Person

AMENDED AND RESTATED CERTIFICATE OF FORMATION
OF
SOUTHCROSS NUECES PIPELINES LLC

This Amended and Restated Certificate of Formation of Southcross Nueces Pipelines LLC (the "***Company***"), dated [_____], has been duly executed and is being filed by the undersigned, an authorized person, in accordance with the provisions of Section 18-208 of the Delaware Limited Liability Company Act, as amended from time to time, to amend and restate the Certificate Formation of the Company, which was originally filed with the Office of the Secretary of State of the State of Delaware on January 27, 2014 (the "***Certificate***"). The undersigned does hereby certify as follows:

The Certificate is hereby amended and restated in its entirety to read as follows:

1. The name of the limited liability company is "Southcross Nueces Pipelines LLC" (the "***Company***").

2. The name and address of the registered agent for service of process on the Company are as follows:

   Corporation Service Company
   251 Little Falls Drive
   Wilmington, Delaware 19808

3. The Company shall not issue any non-voting equity securities to the extent prohibited by Section 1123 of Title 11 of the United States Code (the "***Bankruptcy Code***") as in effect on the date of filing of this Amended and Restated Certificate of Formation with the Secretary of State of the State of Delaware; provided, however, that the foregoing (a) shall have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) shall have such force and effect, if any, only for so long as such section of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

IN WITNESS WHEREOF, the undersigned has duly executed this Amended and Restated Certificate of Formation on the date first above written.

By: _____
Name:
Title: Authorized Person

THIRD AMENDED AND RESTATED CERTIFICATE OF FORMATION
OF
SOUTHCROSS PROCESSING LLC

This Third Amended and Restated Certificate of Formation of Southcross Processing LLC (the "***Company***"), dated [_____], has been duly executed and is being filed by the undersigned, an authorized person, in accordance with the provisions of Section 18-208 of the Delaware Limited Liability Company Act, as amended from time to time, to amend and restate the Certificate Formation of the Company, which was originally filed with the Office of the Secretary of State of the State of Delaware on May 26, 2011 (the "***Certificate***"). The undersigned does hereby certify as follows:

The Certificate is hereby amended and restated in its entirety to read as follows:

1. The name of the limited liability company is Southcross Processing LLC.

2. The name and address of the registered agent for service of process on the Company are as follows:

   Corporation Service Company
   251 Little Falls Drive
   Wilmington, Delaware 19808

3. The Company shall not issue any non-voting equity securities to the extent prohibited by Section 1123 of Title 11 of the United States Code (the "***Bankruptcy Code***") as in effect on the date of filing of this Third Amended and Restated Certificate of Formation with the Secretary of State of the State of Delaware; provided, however, that the foregoing (a) shall have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) shall have such force and effect, if any, only for so long as such section of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

IN WITNESS WHEREOF, the undersigned has duly executed this Third Amended and Restated Certificate of Formation on the date first above written.

By: _____
Name:
Title: Authorized Person

AMENDED AND RESTATED CERTIFICATE OF FORMATION
OF
T2 EF COGENERATION HOLDINGS LLC

This Amended and Restated Certificate of Formation of T2 EF Cogeneration Holdings LLC (the "***Company***"), dated [_____], has been duly executed and is being filed by the undersigned, an authorized person, in accordance with the provisions of Section 18-208 of the Delaware Limited Liability Company Act, as amended from time to time, to amend and restate the Certificate Formation of the Company, which was originally filed with the Office of the Secretary of State of the State of Delaware on March 1, 2013 (the "***Certificate***"). The undersigned does hereby certify as follows:

The Certificate is hereby amended and restated in its entirety to read as follows:

1. The name of the limited liability company is T2 EF Cogeneration Holdings LLC.

2. The name and address of the registered agent for service of process on the Company are as follows:

   Corporation Service Company
   251 Little Falls Drive
   Wilmington, Delaware 19808

3. The Company shall not issue any non-voting equity securities to the extent prohibited by Section 1123 of Title 11 of the United States Code (the "***Bankruptcy Code***") as in effect on the date of filing of this Certificate of Formation with the Secretary of State of the State of Delaware; provided, however, that the foregoing (a) shall have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) shall have such force and effect, if any, only for so long as such section of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

IN WITNESS WHEREOF, the undersigned has duly executed this Amended and Restated Certificate of Formation on the date first above written.

By: _____
Name:
Title: Authorized Person

Form 424
(Revised 05/11)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: See instructions

This space reserved for office use.

Certificate of Amendment

Entity Information

The name of the filing entity is:

FL Rich Gas Services GP, LLC

State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.

The filing entity is a: (Select the appropriate entity type below.)

- ☐ For-profit Corporation
- ☐ Nonprofit Corporation
- ☐ Cooperative Association
- ☑ Limited Liability Company
- ☐ Professional Corporation
- ☐ Professional Limited Liability Company
- ☐ Professional Association
- ☐ Limited Partnership

The file number issued to the filing entity by the secretary of state is: 0801014380

The date of formation of the entity is: July 29,2014

Amendments

1. Amended Name

(If the purpose of the certificate of amendment is to change the name of the entity, use the following statement)

The amendment changes the certificate of formation to change the article or provision that names the filing entity. The article or provision is amended to read as follows:

The name of the filing entity is: (state the new name of the entity below)

The name of the entity must contain an organizational designation or accepted abbreviation of such term, as applicable.

2. Amended Registered Agent/Registered Office

The amendment changes the certificate of formation to change the article or provision stating the name of the registered agent and the registered office address of the filing entity. The article or provision is amended to read as follows:

Registered Agent
(Complete either A or B, but not both. Also complete C.)

☐ A. The registered agent is an organization (cannot be entity named above) by the name of:

OR

☐ B. The registered agent is an individual resident of the state whose name is:

First Name *M.I.* *Last Name* *Suffix*

The person executing this instrument affirms that the person designated as the new registered agent has consented to serve as registered agent.

C. The business address of the registered agent and the registered office address is:

TX

Street Address (No P.O. Box) *City* *State* *Zip Code*

3. Other Added, Altered, or Deleted Provisions

Other changes or additions to the certificate of formation may be made in the space provided below. If the space provided is insufficient, incorporate the additional text by providing an attachment to this form. Please read the instructions to this form for further information on format.

Text Area (The attached addendum, if any, is incorporated herein by reference.)

☑ **Add** each of the following provisions to the certificate of formation. The identification or reference of the added provision and the full text are as follows:

ARTICLE VIII: The Company shall not issue any non-voting equity securities to the extent prohibited by Section 1123 of Title 11 of the United States Code (the "Bankruptcy Code") as in effect on the date of filing of this Certificate of Amendment with the Secretary of State of the State of Texas; provided, however, that the foregoing (a) shall have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) shall have such force and effect, if any, only for so long as such section of the Bankruptcy Code is in

☐ **Alter** each of the following provisions of the certificate of formation. The identification or reference of the altered provision and the full text of the provision as amended are as follows:

☐ **Delete** each of the provisions identified below from the certificate of formation.

Statement of Approval

The amendments to the certificate of formation have been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.

Effectiveness of Filing (Select either A, B, or C.)

A. ☑ This document becomes effective when the document is filed by the secretary of state.

B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. ☐ This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

By: _____

_____
Signature of authorized person

_____
Printed or typed name of authorized person (see instructions)

Form 424
(Revised 05/11)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: See instructions

This space reserved for office use.

Certificate of Amendment

Entity Information

The name of the filing entity is:

FL Rich Gas Utility GP, LLC

State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.

The filing entity is a: (Select the appropriate entity type below.)

- ☐ For-profit Corporation
- ☐ Nonprofit Corporation
- ☐ Cooperative Association
- ☑ Limited Liability Company
- ☐ Professional Corporation
- ☐ Professional Limited Liability Company
- ☐ Professional Association
- ☐ Limited Partnership

The file number issued to the filing entity by the secretary of state is: 0802038204

The date of formation of the entity is: August 1, 2014

Amendments

1. Amended Name

(If the purpose of the certificate of amendment is to change the name of the entity, use the following statement)

The amendment changes the certificate of formation to change the article or provision that names the filing entity. The article or provision is amended to read as follows:

The name of the filing entity is: (state the new name of the entity below)

The name of the entity must contain an organizational designation or accepted abbreviation of such term, as applicable.

2. Amended Registered Agent/Registered Office

The amendment changes the certificate of formation to change the article or provision stating the name of the registered agent and the registered office address of the filing entity. The article or provision is amended to read as follows:

Registered Agent
(Complete either A or B, but not both. Also complete C.)

☐ A. The registered agent is an organization (cannot be entity named above) by the name of:

OR

☐ B. The registered agent is an individual resident of the state whose name is:

First Name *M.I.* *Last Name* *Suffix*

The person executing this instrument affirms that the person designated as the new registered agent has consented to serve as registered agent.

C. The business address of the registered agent and the registered office address is:

TX

Street Address (No P.O. Box) *City* *State* *Zip Code*

3. Other Added, Altered, or Deleted Provisions

Other changes or additions to the certificate of formation may be made in the space provided below. If the space provided is insufficient, incorporate the additional text by providing an attachment to this form. Please read the instructions to this form for further information on format.

Text Area (The attached addendum, if any, is incorporated herein by reference.)

☑ **Add** each of the following provisions to the certificate of formation. The identification or reference of the added provision and the full text are as follows:

ARTICLE VIII: The Company shall not issue any non-voting equity securities to the extent prohibited by Section 1123 of Title 11 of the United States Code (the "Bankruptcy Code") as in effect on the date of filing of this Certificate of Amendment with the Secretary of State of the State of Texas; provided, however, that the foregoing (a) shall have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) shall have such force and effect, if any, only for so long as such section of the Bankruptcy Code is in

☐ **Alter** each of the following provisions of the certificate of formation. The identification or reference of the altered provision and the full text of the provision as amended are as follows:

☐ **Delete** each of the provisions identified below from the certificate of formation.

Statement of Approval

The amendments to the certificate of formation have been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.

Effectiveness of Filing (Select either A, B, or C.)

A. ☑ This document becomes effective when the document is filed by the secretary of state.

B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. ☐ This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

By: _____

Signature of authorized person

Printed or typed name of authorized person (see instructions)

Form 424
(Revised 05/11)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: See instructions

This space reserved for office use.

Certificate of Amendment

Entity Information

The name of the filing entity is:

T2 EF Cogeneration LLC

State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.

The filing entity is a: (Select the appropriate entity type below.)

- ☐ For-profit Corporation
- ☐ Nonprofit Corporation
- ☐ Cooperative Association
- ☑ Limited Liability Company
- ☐ Professional Corporation
- ☐ Professional Limited Liability Company
- ☐ Professional Association
- ☐ Limited Partnership

The file number issued to the filing entity by the secretary of state is: 0801581252

The date of formation of the entity is: April 12, 2012

Amendments

1. Amended Name

(If the purpose of the certificate of amendment is to change the name of the entity, use the following statement)

The amendment changes the certificate of formation to change the article or provision that names the filing entity. The article or provision is amended to read as follows:

The name of the filing entity is: (state the new name of the entity below)

The name of the entity must contain an organizational designation or accepted abbreviation of such term, as applicable.

2. Amended Registered Agent/Registered Office

The amendment changes the certificate of formation to change the article or provision stating the name of the registered agent and the registered office address of the filing entity. The article or provision is amended to read as follows:

Registered Agent
(Complete either A or B, but not both. Also complete C.)

☐ A. The registered agent is an organization (cannot be entity named above) by the name of:

OR

☐ B. The registered agent is an individual resident of the state whose name is:

First Name *M.I.* *Last Name* *Suffix*

The person executing this instrument affirms that the person designated as the new registered agent has consented to serve as registered agent.

C. The business address of the registered agent and the registered office address is:

TX

Street Address (No P.O. Box) *City* *State* *Zip Code*

3. Other Added, Altered, or Deleted Provisions

Other changes or additions to the certificate of formation may be made in the space provided below. If the space provided is insufficient, incorporate the additional text by providing an attachment to this form. Please read the instructions to this form for further information on format.

Text Area (The attached addendum, if any, is incorporated herein by reference.)

☑ **Add** each of the following provisions to the certificate of formation. The identification or reference of the added provision and the full text are as follows:

ARTICLE VIII: The Company shall not issue any non-voting equity securities to the extent prohibited by Section 1123 of Title 11 of the United States Code (the "Bankruptcy Code") as in effect on the date of filing of this Certificate of Amendment with the Secretary of State of the State of Texas; provided, however, that the foregoing (a) shall have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) shall have such force and effect, if any, only for so long as such section of the Bankruptcy Code is in

☐ **Alter** each of the following provisions of the certificate of formation. The identification or reference of the altered provision and the full text of the provision as amended are as follows:

☐ **Delete** each of the provisions identified below from the certificate of formation.

Statement of Approval

The amendments to the certificate of formation have been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.

Effectiveness of Filing (Select either A, B, or C.)

A. ☑ This document becomes effective when the document is filed by the secretary of state.

B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. ☐ This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

By: _____

Signature of authorized person

Printed or typed name of authorized person (see instructions)

Exhibit B

New LLC Agreement

Draft 1/10/20

[AMENDED AND RESTATED]

LIMITED LIABILITY COMPANY AGREEMENT

BY AND AMONG

SOUTHCROSS ENERGY PARTNERS LLC,

AND

THE EFFECTIVE DATE MEMBERS, THEIR TRANSFEREES

AND SUCH OTHER PERSONS PARTY HERETO FROM TIME TO TIME

Dated as of [____], [___]

THE MEMBERSHIP INTERESTS IN THE COMPANY REPRESENTED BY THIS [AMENDED AND RESTATED] LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH MEMBERSHIP INTERESTS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND OTHER LAWS OR EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER SUBSTANTIAL RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

TABLE OF CONTENTS

SCHEDULES

EXHIBITS

[AMENDED AND RESTATED] LIMITED LIABILITY COMPANY AGREEMENT (together with any exhibits, appendices, annexes and schedules hereto, this "Agreement"), dated as of [____], [___], by and among Southcross Energy Partners LLC, a limited liability company organized under the laws of the State of Delaware (the "Company"), and the Members (as hereinafter defined) of the Company as of the Effective Date (as hereinafter defined) listed on Schedule A hereto (the "Effective Date Members") and their Transferees (as hereinafter defined), and such other Persons (as hereinafter defined) that may become party to this Agreement from time to time in accordance with the terms of this Agreement.

RECITALS

WHEREAS, pursuant to or in connection with the Chapter 11 Plan for Southcross Energy Partners, L.P. and its Affiliated Debtors, Case No. 19-10702 (MFW) [Docket. No. 675] (as amended, supplemented or modified from time to time, the "Plan"), the Company shall issue Common Units (as hereinafter defined) to the Effective Date Members;

WHEREAS, this Agreement constitutes the "Reorganized Southcross LLC Agreement" as defined in the Plan;

WHEREAS, the Plan provides that the Company Securities (as hereinafter defined) to be issued to the Members of the Company will be subject to the terms of this Agreement;

WHEREAS, pursuant to the Confirmation Order (as defined in the Plan), this Agreement has been approved as valid and binding on the Company and all Company Security Holders as of the Effective Date; and

WHEREAS, the Company and each of the other parties hereto desire, for their mutual benefit and protection, to enter into this Agreement to set forth their respective rights and obligations with respect to the Company Securities (whether issued on the Effective Date or hereafter acquired);

NOW, THEREFORE, in consideration of the premises and of the mutual consents and obligations hereinafter set forth, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, and in accordance with the Plan and the Confirmation Order, the parties hereto hereby agree as follows:

SECTION 1. DEFINITIONS

1.1 Definitions. Capitalized terms used but not defined herein shall have their respective meanings specified in the Plan. As used herein, the following terms shall have the following respective meanings:

"Act" shall mean the Delaware Limited Liability Company Act and any successor statute, as amended from time to time.

"Additional Capital Contribution" shall mean, with respect to each Member, any Capital Contributions made by such Member in excess of the Effective Date Capital Contribution of such Member.

"Additional Company Security Holders" shall have the meaning set forth in Section 11.1.

"Adjusted Capital Account" means the Capital Account maintained for each Member as provided in Section 5.1, (a) increased by any amounts that such Member is obligated to restore or is treated as obligated to restore under Treasury Regulations Sections 1.704-1(b)(2)(ii)(*c*), 1.704-2(g)(1) and 1.704-2(i)(5), and (b) decreased by any amounts described in Treasury Regulations Section 1.704-1(b)(2)(ii)(*d*)(*4*), (*5*) and (*6*) with respect to such Member. The foregoing definition of "Adjusted Capital Account" is intended to comply with the provisions of Treasury Regulations Sections 1.704-1(b)(2)(ii)(*d*) and 1.704-2 and shall be interpreted consistently therewith.

"Affiliate" shall mean, as to any specified Person, any other Person or entity who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person (which for the avoidance of doubt, shall also include any investment fund, account or other investment vehicle that is controlled, managed, advised or sub-advised by such Person or if such Person is an investment fund, account or other investment vehicle, the Person that controls, manages, advises or sub-advises such Person). As used in this definition, and elsewhere herein in relation to control of Affiliates, the term "control" shall mean the possession, directly or indirectly, of the power to substantially direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, as manager, as trustee or executor, by contract or credit arrangement, or otherwise.

"Agreement" shall have the meaning set forth in the Preamble.

"Allocation Period" means a period (a) commencing on the Effective Date, or, for any Allocation Period other than the first Allocation Period, the day following the end of a prior Allocation Period, and (b) ending (i) on the last day of each Fiscal Year; (ii) the day preceding any day in which an adjustment to the Book Value of the Company's properties pursuant to clauses (b)(i), (b)(ii), (b)(iii) or (b)(v) of the definition of Book Value occurs; (iii) immediately after any day in which an adjustment to the Book Value of the Company's properties pursuant to clause (b)(iv) of the definition of Book Value occurs; or (iv) on any other date determined by the Board.

"Approved Issuance" means an issuance of Company Securities granted under a Company Plan in compliance with the requirements of Section 3.4(b).

"Approved Sale" shall have the meaning set forth in Section 13.1.

"Bankruptcy" shall mean, in respect of any Person, (i) the filing by such Person of a voluntary petition seeking liquidation, reorganization or arrangement, in any form, of its debts under Title 11 of the United States Code or under any other Federal, state, or foreign bankruptcy or insolvency law, or such Person's filing an answer consenting to or acquiescing in any such petition; (ii) the making by such Person of any general assignment for the benefit of its creditors;

or (iii) the expiration of sixty (60) days after the filing of (A) an involuntary petition under Title 11 of the United States Code against such Person, (B) an application for the appointment of a receiver for such Person or for assets of such Person, or (C) an involuntary petition or other pleading seeking liquidation, reorganization or arrangement, in any form, of such Person's debts under any other Federal, state, or foreign bankruptcy or insolvency law, provided that the same shall not have been vacated, set aside or stayed within such sixty (60) day period.

"Bipartisan Budget Act" means Title XI of the Bipartisan Budget Act of 2015 and any related provisions of law, court decisions, regulations, rules, and administrative guidance.

"Board" shall have the meaning set forth in Section 7.3.

"Board Observer" shall have the meaning set forth in Section 7.15.

"Book Value" means, with respect to any property of the Company, such property's adjusted basis for U.S. federal income tax purposes, except as follows:

(a) The initial Book Value of any property contributed by a Member to the Company shall be the Fair Market Value of such property as of the date of such contribution.

(b) The Book Values of all properties shall be adjusted to equal their respective Fair Market Values in connection with (i) the acquisition of an interest (or additional interest) in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution to the Company or in exchange for the performance of more than a *de minimis* amount of services to or for the benefit of the Company; (ii) the distribution by the Company to a Member of more than a *de minimis* amount of property as consideration for an interest in the Company; (iii) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(*g*); (iv) the acquisition of an interest in the Company by any new or existing Member upon the exercise of a non-compensatory option in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(*s*); or (v) any other event to the extent determined by the Board to be permitted and necessary to properly reflect Book Values in accordance with the standards set forth in Treasury Regulations Section 1.704-1(b)(2)(iv)(*q*); provided, however, that adjustments pursuant to clauses (b)(i), (b)(ii) and (b)(iv) above shall be made only if the Board reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company. If any non-compensatory options are outstanding upon the occurrence of an event described in clauses (b)(i) through (b)(v) above, the Company shall adjust the Book Values of its properties in accordance with Treasury Regulations Sections 1.704-1(b)(2)(iv)(*f*)(*1*) and 1.704-1(b)(2)(iv)(*h*)(*2*).

(c) The Book Value of property distributed to a Member shall be adjusted to equal the Fair Market Value of such property as of the date of such distribution.

(d) The Book Value of all property shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such property pursuant to Code

Section 734(b) (including any such adjustments pursuant to Treasury Regulations Section 1.734-2(b)(1)), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)*(m)* and clause (g) of the definition of Profits or Losses or Section 5.3(g); provided, however, that the Book Value of property shall not be adjusted pursuant to this clause (d) to the extent that the Board reasonably determines an adjustment pursuant to clause (b) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (d).

(e) If the Book Value of property has been determined or adjusted pursuant to clauses (a), (b) or (d) of this definition, such Book Value shall thereafter be adjusted by the Depreciation taken into account with respect to such property for purposes of computing Profits, Losses, and other items allocated pursuant to Section 5.

"Business Day" shall mean any day other than a Saturday or Sunday or any day on which the Federal Reserve Bank of New York is closed.

"Capital Contribution" shall mean, with respect to any Member, the amount of money or the initial gross asset value of any property (other than money) contributed or deemed contributed to the equity of the Company by such Member at such time with respect to the Units held by such Member in connection with the making of such Capital Contribution.

"Certificate of Conversion" shall have the meaning set forth in Section 2.1.

"Certificate of Formation" shall mean the Company's certificate of formation, as amended, amended and restated, modified, or supplemented from time to time.

"Chairman" has the meaning set forth in Section 7.4(b).

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Common Units" shall have the meaning set forth in Section 3.5.

"Company" shall have the meaning set forth in the Preamble.

"Company Plan" shall mean any equity incentive plan, arrangement or agreement approved by the Board from time to time pursuant to which Company Securities are or will be granted.

"Company Security" shall mean any Unit or Unit Equivalent.

"Company Security Holder" shall mean a holder of any Company Security party or subject hereto.

"Company Security Holder Group" shall mean (i) with respect to any Company Security Holder that is a natural Person, (A) such Company Security Holder, (B) the spouse, parents, siblings, lineal descendants and adopted children of such Company Security Holder and

(C) any trust for the benefit of any of the foregoing, and (ii) with respect to any Company Security Holder that is a corporation, partnership, limited liability company, firm, association, trust, government, governmental agency or other entity, such Company Security Holder and its Affiliates (so long as they remain Affiliates).

"Compelled" shall have the meaning set forth in Section 17.

"Competitor" shall mean any business that is involved in the oil and gas industry listed on Schedule D attached hereto, which list may be amended from time to time upon the approval of a majority of the Board, which majority must include, for so long as the Tier 1 Holder Group has the right to appoint and designate a Manager pursuant to Section 7.4(a)(ii), at least one (1) Tier 1 Manager; provided, however, that any Major Holder as of the Effective Date and any Affiliate thereof shall not be a Competitor.

"Confidential Information" shall mean oral and written information concerning the Company or its Subsidiaries or their respective businesses or operations furnished to any Member or Representative thereof by or on behalf of the Company (irrespective of the form of communication and whether such information is so furnished before, on or after the date hereof), and all analyses, compilations, data, studies, notes, interpretations, memoranda or other documents prepared by any Member or any Representative thereof containing or based in whole or in part on any such furnished information; provided, that the term "Confidential Information" does not, with respect to any Member, include any information which (i) at the time of disclosure is or thereafter becomes generally available to the public (other than as a result of a disclosure directly or indirectly by such Member or any of its Representatives in violation of Section 17) or (ii) is or becomes available to such Member on a nonconfidential basis from a source other than the Company or its agents, representatives or advisors provided that such source was not prohibited from disclosing such information to such Member by a legal, contractual or fiduciary obligation.

"Confirmation Order" shall have the meaning set forth in the Plan.

"Consent of Spouse" shall have the meaning set forth in Section 19.12.

"Conversion Date" shall have the meaning set forth in Section 2.1.

"Conversion Price" shall have the meaning set forth in Section 3.7(c).

"Convertible Securities" means any Units, securities and/or instruments directly or indirectly convertible into or exchangeable for Common Units and/or any other equity interests of the Company.

"Damages" shall have the meaning set forth in Section 10.2(a).

"Debtors" shall have the meaning set forth in the Plan.

"Deemed Liquidation Event" shall mean any of the following events:

(i) any Bankruptcy, decision by the Board to authorize a Bankruptcy, or an approval by a court of competent jurisdiction of a plan of liquidation or dissolution with respect to the Company.

(ii) any transaction or series of related transactions (including any reorganization, merger, consolidation or transfer of equity interests) where the Company Security Holders immediately preceding such transaction own Company Securities that represent less than 50% of the votes or economic interest in respect of Company Securities immediately following such transaction;

(iii) if any person (including any syndicate or group deemed to be a "person" under Section 13(d)(3) of the Exchange Act) other than a Company Security Holder of a Tier 1 Holder Group or a Tier 2 Holder Group in a single transaction or series of related transactions, is or becomes the "beneficial owner" (as determined in accordance with Rule 13d-3 of the Exchange Act, as amended, except that a person will be deemed to own any securities that such person has a right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of Company Securities that represent more than 50% of votes or economic in respect of Company Securities; or

(iv) the sale, lease, transfer, exclusive license or other disposition (by merger or otherwise), in a single transaction or series of related transactions, by the Company and/or any Subsidiary or Subsidiaries of the Company of all or substantially all of the assets of the Company and its Subsidiaries taken as a whole, except where such sale, lease, transfer, exclusive license or other disposition is to the Company or one or more direct or indirect wholly owned Subsidiaries of the Company.

"Depreciation" means, for each Allocation Period an amount equal to the depreciation, amortization or other cost recovery deduction allowable for U.S. federal income tax purposes with respect to property for such Allocation Period, except that (a) with respect to any such property the Book Value of which differs from its adjusted tax basis for U.S. federal income tax purposes and which difference is being eliminated by use of the "remedial method" pursuant to Treasury Regulations Section 1.704-3(d), Depreciation for such Allocation Period shall be the amount of book basis recovered for such Allocation Period under the rules prescribed by Treasury Regulations Section 1.704-3(d)(2) and (b) with respect to any other such property the Book Value of which differs from its adjusted tax basis at the beginning of such Allocation Period, Depreciation shall be an amount which bears the same ratio to such beginning Book Value as the U.S. federal income tax depreciation, amortization or other cost recovery deduction for such Allocation Period bears to such beginning adjusted tax basis; provided, however, that if the adjusted tax basis of any property at the beginning of such Allocation Period is zero dollars ($0.00), Depreciation with respect to such property shall be determined with reference to such beginning value using any reasonable method selected by the Board.

"Designated Individual" means an individual meeting the requirements of proposed Treasury Regulations Section 301.6223-1(b)(2) and (4) that is appointed as the sole individual through whom the Partnership Representative will act for purposes of subchapter C of chapter 63 of the Code, as provided in the proposed Treasury Regulations.

"Disqualification Event" shall have the meaning set forth in Section 7.4(d).

"Disqualified Designee" shall have the meaning set forth in Section 7.4(d).

"Distribution Date" shall have the meaning set forth in Section 4.1(a).

"Drag-Along Right" shall have the meaning set forth in Section 13.1.

"Drag-Along Seller" shall have the meaning set forth in Section 13.2.

"Dragging Members" shall have the meaning set forth in Section 13.1.

"Economic Risk of Loss" has the meaning set forth in Treasury Regulations Section 1.752-2(a).

"Effective Date" shall mean [●].

"Effective Date Capital Contribution" has the meaning set forth in Section 3.1.

"Effective Date Consideration" shall have the meaning set forth in Section 4.2(b).

"Effective Date Members" shall have the meaning set forth in the Preamble.

"Employee Manager" shall have the meaning set forth in Section 7.5(a).

"Excess Cash Balance" shall have the meaning set forth in Section 4.6(a)(iv).

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, or any successor Federal statute, and the rules and regulations of the SEC promulgated thereunder, all as the same shall be in effect from time to time.

"Excluded Affiliate" shall mean an Affiliate of a Competitor that is not (a) itself a Competitor or (b) controlled by a Competitor.

"Excluded Securities" shall mean any Company Securities:

(i) issued as a dividend or distribution on any Company Securities in accordance with this Agreement;

(ii) granted or issued to employees, service providers, officers, directors (or Persons in similar positions, including, without limitation, members of the Board), managers of, or contractors, consultants or advisors to, the Company or any of its Subsidiaries pursuant to incentive, service or employment agreements, equity purchase or equity option plans, equity bonuses or awards, warrants, contracts or other arrangements that are approved by the Board (subject to the terms of this Agreement) pursuant to the terms of this Agreement;

(iii) issued or issuable in connection with any equipment leases, real property leases, loans, credit lines, guarantees of Indebtedness or similar transactions, in each case, approved by the Board;

(iv) issued pursuant to the acquisition of another Person by the Company or any of its Subsidiaries by consolidation, merger, purchase of assets, or other transaction in which the Company or such Subsidiary acquires, in a single transaction or series of related transactions, assets of or equity interests in such other Person;

(v) issued to vendors, lenders or customers of, or consultants to, the Company or any of its Subsidiaries or in connection with a strategic partnership or other relationship, in each case, to the extent such issuance has been approved by the Board;

(vi) issued in connection with the conversion or exercise of any security convertible into or exercisable for Company Securities (including for the avoidance of doubt any Preferred Unit), so long as such convertible or exercisable security was issued in accordance with the terms of this Agreement;

(vii) issued pursuant to any public offering and sale pursuant to an effective registration statement under the Securities Act (including, without limitation, any Qualified IPO); or

(viii) any issuance of Units, Options or Convertible Securities pursuant to reclassifications, subdivisions, combinations, distributions or similar events.

"Exempted Persons" shall have the meaning set forth in Section 10.5(c).

"Exit Credit Agreement" shall mean that certain [●][1].

"Exit Facility Refinancing Debt" shall have the meaning set forth in Section 3.6(c).

"Fair Market Value" shall mean, with respect to any assets or securities, the fair market value for such assets or securities, reflecting the amount that a willing buyer would pay to a willing seller in an arm's-length transaction occurring on the date of valuation, as determined in good faith by the Board in its reasonable discretion, taking into account all relevant factors determinative of value, including, without limitation, preference rights, lack of liquidity, control, and restrictions on marketability or transferability; provided, however, that the Fair Market Value of any publicly traded securities shall be determined as follows: (a) if the securities are listed on one or more national securities exchanges, the Nasdaq National Market, the New York Stock Exchange or a non-United States securities exchange with similar liquidity, the fair market value of such securities shall be the weighted average of the closing prices as reported for

[1] **Note to Draft**: To refer to credit agreement in respect of the Exit Credit Facility as in effect on the date of this Agreement.

composite transactions on the primary exchange or market for such securities during the ten consecutive trading days preceding the trading day immediately prior to the date of valuation, or if no sale occurred on a trading day, then the mean between the closing bid and ask prices on such exchange or market on such trading day; or (b) if the securities are traded over-the-counter (other than on the Nasdaq National Market, New York Stock Exchange or a non-United States securities exchange with similar liquidity), the fair market value of such securities shall be the arithmetic average (for consecutive trading days) of the mean between the highest bid and lowest asked prices as of the close of business during the ten consecutive trading days preceding the trading day immediately prior to the date of valuation, as quoted on the National Association of Securities Dealers Automated Quotation System or equivalent generally accepted reporting service; provided, further, that any security that is publicly traded but is subject to contractual or regulatory restrictions on marketability or transfer shall be valued at such discount from the values described in the foregoing proviso as the Board deems appropriate, taking into account all restrictions on marketability or transfer of such security.

"Federal" shall mean the U.S. Federal government.

"Final DIP Order" means [●].

"Financial Officer" shall mean any of the chief financial officer, principal accounting officer, treasurer, assistant treasurer, vice president of finance or controller of the Company.

"Fiscal Year" has the meaning set forth in Section 2.6.

"Fully Diluted Basis" shall mean all outstanding Common Units assuming (i) the conversion of all outstanding Preferred Units and any other Convertible Securities and (ii) the exercise of all outstanding warrants, Options or other rights or securities to acquire Common Units, without regard to any restrictions or conditions with respect to the exercisability of the same.

"Fund Indemnitee" shall have the meaning set forth in Section 10.2(c).

"Fund Indemnitors" shall have the meaning set forth in Section 10.2(c).

"GAAP" shall mean United States generally accepted accounting principles applied on a consistent basis.

"Holder Group" shall mean, with respect to any Company Security Holder, such Company Security Holder together with its Affiliates.

"Indebtedness" shall mean, for any Person, without duplication, determined on a consolidated basis in accordance with GAAP, (a) all obligations for borrowed money, (b) all obligations evidenced by bonds, debentures, notes, debt securities or similar instruments, (c) all obligations under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all obligations issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business), (e) all Indebtedness of others secured by (or for which the holder of

such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed; provided, however, that the amount of Indebtedness of any Person under this clause (e) that is limited in recourse solely to the property secured thereby shall, for purposes of this Agreement, be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of such property so encumbered, (f) all guarantees by such Person of Indebtedness of others, (g) all capital lease obligations of such Person and (h) all direct or contingent obligations of such Person as an account party in respect of letters of credit (including standby and commercial), bankers' acceptances and bank guarantees. The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or joint venturer, except to the extent that, by its terms, such Indebtedness is nonrecourse to such Person.

"Indemnitee" has the meaning set forth in Section 10.2(a).

"Initial CEO" shall mean [____][2].

"Initial Subscribing Member" shall have the meaning set forth in Section 15.3.

"Initial Tier 1 Holder Group" means any Holder Group that owns at least 20% of the Units outstanding on a Fully Diluted Basis as of the Effective Date.

"Initial Tier 2 Holder Group" means any Holder Group, which is not a Tier 1 Holder Group, that owns at least 11% of the Units outstanding on a Fully Diluted Basis, as of the Effective Date.

"Initiating Holder" shall have the meaning set forth in Section 14.1.

"Initiating Holder Nominee" shall have the meaning set forth in Section 14.9.

"Joinder Agreement" shall have the meaning set forth in Section 11.1.

"Liquidation" shall mean any liquidation, dissolution or winding up of the Company or any Bankruptcy, reorganization or other similar event or proceeding, whether voluntary or involuntary, with respect to the Company, or any Deemed Liquidation Event.

"Liquidator" shall have the meaning set forth in Section 16.3(b).

"Major Holder" shall mean each Company Security Holder that, together with its Affiliates, owns Units that represent at least 5% of the Units outstanding on a Fully Diluted Basis.

"Manager" shall have the meaning set forth in Section 7.3.

[2] **Note to Draft**: To be determined.

"Member Investments" shall have the meaning set forth in Section 10.5(a).

"Member Nonrecourse Debt" has the meaning assigned to the term "partner nonrecourse debt" in Treasury Regulations Section 1.704-2(b)(4).

"Member Nonrecourse Debt Minimum Gain" has the meaning assigned to the term "partner nonrecourse debt minimum gain" in Treasury Regulations Section 1.704-2(i)(2).

"Member Nonrecourse Deduction" has the meaning assigned to the term "partner nonrecourse deduction" in Treasury Regulations Section 1.704-2(i)(1).

"Members" shall mean, collectively, the Effective Date Members and any other Person admitted to the Company as a "Member" from time to time in accordance with the terms of this Agreement, and shall exclude (for the avoidance of doubt) any Person who ceases to be a Member pursuant to the terms set forth in this Agreement.

"Membership Interest" means a Member's entire interest in the Company, including such Member's economic interest, the right to vote on or participate in the Company's management and the right to receive information concerning the business and affairs of the Company, in each case, to the extent any such right is expressly provided in this Agreement or required by the Act.

"Minimum Gain" has the meaning assigned to that term in Treasury Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

"Nominating Member(s)" shall mean any Company Security Holder that owns, or group of Company Security Holders that collectively own, as of both the close of business on the date of the giving of the notice by such Nominating Member to the Company as provided for in Section 7.6(a) and the record date in respect of which such notice is being given, Units that represent at least 11% of the Units outstanding on a Fully Diluted Basis (as set forth in the Company's books and records).

"Nominee" shall have the meaning set forth in Section 13.4.

"Non-Growth CapEx" shall have the meaning set forth in Section 4.6(a)(iv).

"Non-Recourse Person" shall have the meaning set forth in Section 19.11.

"Nonrecourse Deduction" has the meaning assigned to that term in Treasury Regulations Section 1.704-2(b)(1).

"Officer" shall have the meaning set forth in Section 7.14(a).

"Options" means any rights, warrants or options to subscribe for or purchase any equity securities of the Company.

"Other Accredited Member" shall have the meaning set forth in Section 15.3.

"Other Manager" shall have the meaning set forth in Section 7.4(a)(iv).

"Outside Redemption Date" shall have the meaning in Section 4.6(b).

"Per Unit Drag/Tag Price" shall mean: (i) to the extent that a Drag-Along Seller or Tag-Along Seller is selling the same Company Security being sold by the Dragging Members or the Initiating Holders, as applicable, the same consideration per security for such security as is proposed to be received by the Dragging Members or the Initiating Holders, as applicable (less the exercise price in respect of Unit Equivalents (in the case of Unit Equivalents) and as adjusted for the applicable control premium), including proportionate rights to receive (when and if paid) a proportionate share of any deferred consideration, earn-out or escrow funds that may become payable with respect to such Approved Sale or Tag-Along Transaction, as applicable, as and when made available to the Company Security Holders in connection with the proposed transaction; and (ii) to the extent that a Drag-Along Seller or Tag-Along Seller, as applicable, is selling any series or class of Units (including any Unit Equivalents) that is not being sold by the Dragging Members or the Initiating Holders, as applicable, a price equal to the implied equity value of each such Unit, determined by reference to the per Unit price being paid with respect to the Company Securities, as applicable, being sold by the Dragging Members or the Initiating Holders, as applicable, giving effect to the priority of distributions set forth in Section 4 (less the exercise price in respect of Unit Equivalents (in the case of Unit Equivalents) and as adjusted for the applicable control premium).

"Permitted Transferee" shall mean, with respect to any Company Security Holder, any Person within the Company Security Holder Group of such Company Security Holder, provided that (A) such transferee agrees to Transfer such Company Securities to the Company Security Holder from whom such transferee received such Company Securities at no cost immediately prior to the occurrence of any event which would result in such transferee no longer being a Person within the Company Security Holder Group of such Company Security Holder and (B) such Company Security Holder agrees to accept the transfer of such Company Securities at any time from such transferee so long as such Company Security Holder does not have to incur any costs (other than *de minimis* out-of-pocket fees and expenses) in connection therewith or pay any amounts for such Company Securities.

"Person" shall mean any natural person, corporation, partnership, limited liability company, firm, association, trust, government, governmental agency, or other entity, whether acting in an individual, fiduciary or other capacity.

"Plan" shall have the meaning set forth in the Recitals.

"Preemptive Amount" shall have the meaning set forth in Section 15.1.

"Preemptive Member" shall have the meaning set forth in Section 15.1.

"Preemptive Notice" shall have the meaning set forth in Section 15.2.

"Preemptive Reply" shall have the meaning set forth in Section 15.2.

"Preemptive Right" shall have the meaning set forth in Section 15.1.

"Preemptive Securities" shall have the meaning set forth in Section 15.1.

"Preferred Manager" shall have the meaning set forth in Section 4.6(d)(ii).

"Preferred Original Price" shall have the meaning set forth in Section 3.7(c).

"Preferred Per Unit Price" shall mean with respect to a Series A Preferred Unit, the Series A Per Unit Price and with respect to the Series B Preferred Units, the Series B Per Unit Price.

"Preferred Units" shall mean any class of preferred Units in the Company from time to time authorized in accordance with this Agreement (the only class of which, as of the Effective Date, shall be the Series A Preferred Units and the Series B Preferred Units).

"Profits" or "Losses" means, for each Allocation Period, an amount equal to the Company's taxable income or loss for such period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

(a) any income of the Company that is exempt from U.S. federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this definition of "Profits" or "Losses" shall be added to such taxable income or loss;

(b) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(*i*), and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "Profits" or "Losses," shall be subtracted from such taxable income or loss;

(c) in the event the Book Value of any asset is adjusted pursuant to clause (b) or clause (c) of the definition of Book Value, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Book Value of the asset) or an item of loss (if the adjustment decreases the Book Value of the asset) from the disposition of such asset and shall, except to the extent allocated pursuant to Section 5.3, to be taken into account for purposes of computing Profits or Losses;

(d) gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for U.S. federal income tax purposes shall be computed by reference to the Book Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Book Value;

(e) in lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation;

(f) to the extent an adjustment to the adjusted tax basis of any asset pursuant to Code Section 734(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(*m*)(*4*), to be taken into account in determining Capital Account balances as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or an item of loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses; and

(g) any items that are allocated pursuant to Section 5.3 shall not be taken into account in computing Profits and Losses, but the amounts of the items of income, gain, loss or deduction available to be specially allocated pursuant to Section 5.3 will be determined by applying rules analogous to those set forth in clauses (a) through (f) above.

"Protected Person" shall mean (a) a Member, a Manager, and an Officer, in each case, in his, her or its capacity as such, (b) any manager, director or officer of any direct or indirect Subsidiary of the Company, in each case, in his, her or its capacity as such, (c) any Affiliate or direct or indirect owner of any Member of any Holder Group which has the right to appoint at least one Manager pursuant to Section 7.4(a)(ii) or Section 7.4(a)(iii), and any director, officer, partner, member, manager or trustee of any such Affiliate or owner, in each case, in his, her or its capacity as such and (d) any Person who is or was serving at the request of the Company for another corporation, partnership, limited liability company or other entity or enterprise as a director, officer, partner, member, manager or trustee thereof.

"Proxy" shall mean any proxy, contract, arrangement, understanding, or relationship (whether written or oral), other than a revocable proxy given in response to a public proxy solicitation made pursuant to, and in accordance with, the Exchange Act, pursuant to which a Company Security Holder has a right to vote, shares voting rights, has authorized another Person to vote, has Transferred any right to vote, or relates in any way to the voting of any Company Securities.

"Public Offering" shall mean a public offering and sale of Company Securities pursuant to an effective registration statement under the Securities Act (other than on Form S-4, S-8, or any similar or successor form relating to Company Securities issuable upon exercise of employee stock options or in connection with any employee benefit or similar plan of the Company or in connection with a direct or indirect business combination involving the Company and another Person, filed under the Securities Act). For the avoidance of doubt, a Public Offering shall not include sales by Company Security Holders pursuant to an exemption provided by Rules 144, 144A or Regulation S under the Securities Act.

"Qualified IPO" shall mean any firm commitment public offering of Units pursuant to an effective registration statement on the Nasdaq Global Market, the New York Stock Exchange or other agreed internationally recognized exchange resulting in net proceeds to the Company (including after underwriter discounts shall have been paid) of the aggregate amount necessary to pay all amounts that would be required to have been paid by the Company

to the holders of Preferred Units pursuant to Sections 4.2(a)(i) and 4.2(a)(ii) if a Liquidation had occurred on the day immediately preceding the day of the closing of such public offering.

"Representatives" shall have the meaning set forth in Section 17.

"Requisite Preferred Majority" shall mean the Company Security Holders that collectively own Company Securities that represent at least a majority of the votes entitled to be cast by all Preferred Units convertible into Common Units (voting together as a single class on an as-converted to Common Unit basis).

"Requisite Series A Preferred Majority" shall mean the Company Security Holders that collectively own Company Securities that represent at least a majority of the votes entitled to be cast by all Series A Preferred Units.

"Requisite Series B Preferred Majority" shall mean the Company Security Holders that collectively own Company Securities that represent at least a majority of the votes entitled to be cast by all Series B Preferred Units.

"Rule 144" shall mean Rule 144 promulgated under the Securities Act.

"Sale Notice" shall have the meaning set forth in Section 14.1.

"SEC" shall mean the Securities and Exchange Commission or any successor governmental agency.

"Securities" shall mean any debt or equity securities of any issuer, including common and preferred stock and interests in limited liability companies (including warrants, rights, put and call options and other options relating thereto or any combination thereof), notes, bonds, debentures, trust receipts and other obligations, instruments or evidences of Indebtedness, other property or interests commonly regarded as securities, interests in real property, whether improved or unimproved, interests in properties, short term investments commonly regarded as money market investments, bank deposits and interests in personal property of all kinds, whether tangible or intangible.

"Securities Act" shall mean the Securities Act of 1933, as amended, or any successor Federal statute, and the rules and regulations of the SEC promulgated thereunder, all as the same shall be in effect from time to time.

"Semi-Annual Excess Cash Prepayment" shall have the meaning set forth in Section 4.6(a).

"Series A Cash Option" shall have the meaning set forth in Section 4.1(a).

"Series A Per Unit Price" shall mean $1.00 (One Dollar), subject to proportionate and equitable adjustments to reflect any non-cash, Unit or other equity interest dividend or subdivision, combination, recapitalization or the like of Units or other equity interests of the Company affecting such Series A Preferred Unit, plus, without duplication, the aggregate amount of any and all Series A PIK Accruals and Series A PIK Options.

"Series A PIK Accrual" shall have the meaning set forth in Section 4.1(a).

"Series A PIK Option" shall have the meaning set forth in Section 4.1(a).

"Series A Preferred Units" shall have the meaning set forth in Section 3.5.

"Series B Per Unit Price" shall mean $1.00 (One Dollar), subject to proportionate and equitable adjustments to reflect any non-cash, Unit or other equity interest dividend or subdivision, combination, recapitalization or the like of Units or other equity interests of the Company affecting such Series B Preferred Unit, plus, without duplication, the aggregate amount of any and all Series B PIK Accruals.

"Series B PIK Accrual" shall have the meaning set forth in Section 4.1(b).

"Series B Preferred Units" shall have the meaning set forth in Section 3.5.

"Subsidiary" shall mean, with respect to any Person, any corporation, limited liability company, partnership, joint venture, or other legal entity of which a majority of the securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time owned, or the management of which is otherwise controlled, in either case, directly or indirectly, through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Company.

"Substitute Company Security Holder" shall mean any Person that has been admitted to the Company as a Member pursuant to Section 11.1 by virtue of such Person receiving all or a portion of an Unit from a Member or its assignee and not from the Company.

"Successor Refinancing Debt" shall have the meaning set forth in Section 3.6(c).

"Tag-Along Securities" shall mean, with respect to any Tag-Along Transaction, the class or classes of Company Securities proposed to be sold by the Initiating Holders in such Tag-Along Transaction.

"Tag-Along Seller" shall have the meaning set forth in Section 14.1.

"Tag-Along Transaction" shall mean any transaction, other than an Approved Sale, involving a Transfer by one or more Company Security Holders of (i) Common Units representing at least 75% of the Common Units then outstanding, (ii) Series A Preferred Units representing at least 75% of the Series A Preferred Units then outstanding, or (iii) Series B Preferred Units representing at least 75% of the Series B Preferred Units then outstanding, in each case, to any single Person or "group" (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) of Persons other than any Permitted Transferees of such transferring Company Security Holders.

"Tag-Along Transaction Documents" shall have the meaning set forth in Section 14.3.

"Tier 1 Holder Group" shall mean (i) the Initial Tier 1 Holder Group, for so long as it owns Company Securities that represent at least 11% of the Units outstanding on a Fully Diluted Basis, or (ii) any Transferee of a Tier 1 Holder Group in connection with a Transfer of an amount of Units representing at least 11% of the Units then outstanding on a Fully Diluted Basis for so long as such Transferee, and its Affiliates, collectively own Company Securities that represent at least 11% of the Units outstanding on a Fully Diluted Basis.

"Tier 1 Manager" shall have the meaning set forth in Section 7.4(a)(ii).

"Tier 2 Holder Group" shall mean (i) the Initial Tier 2 Holder Group, for so long as it owns Company Securities that represent at least 11% of the Units outstanding on a Fully Diluted Basis or (ii) any Transferee of a Tier 2 Holder Group in connection with a Transfer of an amount of Units representing at least 11% of the Units then outstanding for so long as such Transferee, and its Affiliates, collectively own Company Securities that represent at least 11% of the Units outstanding on a Fully Diluted Basis.

"Tier 2 Manager" shall have the meaning set forth in Section 7.4(a)(iii).

"Tiered Holder" shall mean any member of a Tier 1 Holder Group or Tier 2 Holder Group.

"Transfer" shall mean to sell, assign, transfer, convey or otherwise dispose of, directly or indirectly or synthetically (including by way of participation), any Company Security, in whole or in part (including any interest, pecuniary or otherwise, therein, by derivative, swap or otherwise).

"Transferee" shall mean any Person who acquires any Company Security from a Company Security Holder.

"Treasury Regulations" means temporary and final Treasury Regulations promulgated under the Code, as amended from time to time.

"Unit Equivalent" shall mean any equity securities, warrants, rights, calls, options or other Securities or instruments exchangeable or exercisable for, or convertible into, directly or indirectly, Units or equity interests in the Company.

"Units" shall mean units of interest in the Company from time to time outstanding hereunder (which are initially represented, as of the Effective Date, by the Common Units, Series A Preferred Units and Series B Preferred Units).

"Unrestricted Cash" shall have the meaning set forth in Section 4.6(a)(iv).

1.2 Terms Generally. The definitions in Section 1.1 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." All terms herein that relate to accounting matters shall be interpreted in accordance with GAAP from time to time in effect. All references to "Sections" shall refer to Sections of this Agreement

unless otherwise specified. The words "hereof", "herein" and "herewith" and similar terms shall relate to this Agreement as a whole and not to any particular provision of this Agreement. The word "or" shall not be exclusive. Provisions shall apply, when appropriate, to successive events and transactions. The headings and captions of this Agreement are for convenience of reference only and shall not define, limit or otherwise affect any of the terms hereof.

SECTION 2. ORGANIZATION

2.1 Formation of Company. The Company was formed on [●], pursuant to the Act, upon the filing of a Certificate of Conversion converting Southcross Energy Partners, L.P. from a Delaware limited partnership to a Delaware limited liability company (the "Certificate of Conversion") on such date. The rights and liabilities of the Members shall be as provided for in the Act if not otherwise expressly provided for in this Agreement.

2.2 Name. The name of the Company is "Southcross Energy Partners LLC". The business of the Company shall be conducted under such name or under such other names as the Board may deem appropriate.

2.3 Registered Office; Registered Agent; Principal Office; Other Offices. The registered office of the Company required by the Act to be maintained in the State of Delaware shall be the office of the initial registered agent named in the Certificate of Formation or such other office (which need not be a place of business of the Company) as the Board may designate from time to time in the manner provided by law. The registered agent of the Company in the State of Delaware shall be the initial registered agent named in the Certificate of Formation or such other Person or Persons as the Board may designate from time to time in the manner provided by law. The principal office of the Company shall be at such place as the Board may designate from time to time, which need not be in the State of Delaware, and the Company shall maintain records at such place. The Company may have such other offices as the Board may designate from time to time.

2.4 Term. The Company commenced on the date of the filing of the Certificate of Formation and Certificate of Conversion, and the term of the Company shall continue until the dissolution of the Company in accordance with the provisions of Section 16 or as otherwise required by non-waivable provisions of applicable law.

2.5 Purpose and Scope.

(a) General Powers. The nature of the business or purposes to be conducted or promoted by the Company is to engage in any lawful act or activity for which limited liability companies may be organized under the Act. The Company may engage in any and all activities necessary, desirable or incidental to the accomplishment of the foregoing. Notwithstanding anything herein to the contrary, nothing set forth herein shall be construed as authorizing the Company to possess any purpose or power, or to do any act or thing, forbidden by law to a limited liability company organized under the laws of the State of Delaware.

(b) Company Action. Subject to the provisions of this Agreement and except as prohibited by applicable law (i) the Company may enter into and perform any and all documents, agreements and instruments, all without any further act, vote or approval of any

Member and (ii) the Board may authorize any Person (including any Member, Manager or Officer) to enter into and perform any document on behalf of the Company.

2.6 Fiscal Year. Unless otherwise determined by the Board, the fiscal year ("Fiscal Year") of the Company shall end on the Saturday closest to December 31 of each calendar year unless, for Federal income tax purposes, another Fiscal Year is required. Unless otherwise determined by the Board, the Company shall have the same Fiscal Year for Federal income tax purposes and for accounting purposes.

2.7 Company Status. The Members intend that the Company be treated as a partnership for U.S. Federal income tax purposes.

SECTION 3. CAPITAL CONTRIBUTIONS; MEMBERSHIP INTERESTS; UNITS

3.1 Capital Contributions. Each Member has made (or is hereby deemed to have made) an Effective Date Capital Contribution as of the Effective Date in the amount set forth opposite its name on Schedule A (with respect to each such Member, the "Effective Date Capital Contribution" of such Member).

3.2 Additional Capital Contributions. No Member shall be required to make any Additional Capital Contributions to the Company unless such Member shall agree to do so in writing. All Capital Contributions that are made in cash shall be denominated and payable in U.S. dollars.

3.3 Interest Payments. Without limiting the terms set forth in Section 4.1, no interest shall be paid to any Member on any Capital Contributions.

3.4 Issuance of Units; Company Plans.

(a) Subject to the terms and conditions of this Agreement, the Board is authorized in its sole and complete discretion to cause the Company to issue, on such terms and conditions as the Board shall reasonably determine, additional Membership Interests or Units, which Membership Interests or Units may be of the same or different class from the Membership Interests and Units which are outstanding prior to such issuance, at any time or from time to time to existing Members or to other Persons, and to admit such other Persons to the Company as Additional Company Security Holders subject to the terms and conditions of this Agreement. In connection therewith, the Board shall, subject to the terms and conditions of this Agreement, have sole and complete discretion to create new classes or series of Membership Interests or Units (in addition to the existing classes of Membership Interests and Units), with such designations, preferences and relative, participating, optional or other special rights, powers and duties, as shall be fixed by the Board in the exercise of its reasonable discretion. Schedule B may be amended by the Board or its designee (without the consent or approval of any Member) from time to time to reflect issuances, transfers or assignments of Company Securities permitted by, and effected in accordance with the terms of, this Agreement, as well as admissions or permitted withdrawals of Members pursuant to the terms of this Agreement.

(b) Without limiting the generality of paragraph (a) above, but subject to the terms and conditions of this Agreement, subject to the approval of a majority of the Board, which majority must include, for so long as the Tier 1 Holder Group has the right to appoint and designate a Manager pursuant to Section 7.4(a)(ii), at least one (1) Tier 1 Manager, and for so long as the Tier 2 Holder Group has the right to appoint and designate a Manager pursuant to Section 7.4(a)(iii), the Tier 2 Manager, the Board may establish and implement one or more Company Plans under which Membership Interests or Units or options to acquire Membership Interests or Units of the Company may be issued or granted to directors, managers, officers, employees and consultants of the Company or its Subsidiaries; provided, that without the approval of a majority of the Board, which majority must include at least one Tier 1 Manager, the amount of such Company Securities granted under such Company Plans does not at any time exceed in the aggregate 6% of the Units outstanding on a Fully Diluted Basis. Notwithstanding anything to the contrary contained herein, in addition to any conditions or restrictions on any class of Membership Interests or Units contained in this Agreement, any such Membership Interests or Units or options to acquire Membership Interests or Units may also be subject to such other conditions and restrictions (including as to vesting) as determined by the Board and set forth in an agreement executed and delivered in connection with any such issuance or grant.

3.5 Unit Designations; Unit Issuances. The following classes of Units are hereby created: (a) a class of Units designated as "Common Units" (the "Common Units"), of which the Company is authorized to issue as many Common Units as the Board approves from time to time; (b) a class of Units designated as "Series A Preferred Units" (the "Series A Preferred Units") of which the Company is authorized to issue as many Series A Preferred Units as the Board approves from time to time; and (c) a class of Units designated as "Series B Preferred Units" (the "Series B Preferred Units") of which the Company is authorized to issue as many Series B Preferred Units as the Board approves from time to time.

3.6 Preferred Unit Approval Rights.

(a) Series A Preferred Approval Rights. Notwithstanding anything to the contrary contained herein, neither the Company nor any of its Subsidiaries shall, and the Company shall cause each of its Subsidiaries not to, in each case, including through merger, amendment, consolidation, statutory exchange, recapitalization or otherwise, take any of the following actions without the approval of the Requisite Series A Preferred Majority:

(i) incur any Indebtedness, or issue any equity security, ranking senior to, or pari passu with, the Series A Preferred Units with respect to the right to receive assets of the Company in connection with any distribution by, or liquidation of, the Company, other than (x) any Indebtedness permitted to be incurred under the Exit Credit Agreement and (y) the Series B Preferred Units;

(ii) incur any Indebtedness, or issue any equity security, of any Subsidiary of the Company, other than (a) the incurrence of Indebtedness, or the issuance of equity securities, solely to the Company or any of its wholly owned Subsidiaries or (b) the incurrence of Indebtedness permitted under the Exit Credit Agreement;

(iii) declare or pay any distribution or dividend on any equity interests in the Company or any of its Subsidiaries, other than (a) distributions or dividends paid or payable solely to the Company or any of its wholly-owned Subsidiaries, (b) tax distributions by or to the Company or to any wholly-owned Subsidiary of the Company, (c) distributions on the Series B Preferred Units in connection with the redemption thereof, or (d) distributions on the Series B Preferred Units and the Series A Preferred Units pursuant to the Series B PIK Accrual, the Series A PIK Accrual, the Series A PIK Option or the Series A Cash Option, as applicable;

(iv) redeem or repurchase any equity securities of the Company or any of its Subsidiaries other than (a) redemptions of Preferred Units as provided in this Agreement or (b) in accordance with the terms of any Approved Issuance, redemptions of equity interests issued pursuant to such Approved Issuance, or (c) redemptions of equity securities held by any director, officer or employee of the Company or any of its Subsidiaries in connection with their termination of employment or service for a purchase price equal to, unless otherwise provided in any applicable severance or incentive plan agreement approved by the Board, the lesser of (1) cost and (2) fair market value; or

(v) amend or modify any of the rights, preferences or privileges of the Series A Preferred Units.

(b) Series B Preferred Approval Rights. Notwithstanding anything to the contrary contained herein, neither the Company nor any of its Subsidiaries shall, and the Company shall cause each of its Subsidiaries not to, in each case, including through merger, amendment, consolidation, statutory exchange, recapitalization or otherwise, take any of the following actions without the approval of the Requisite Series B Preferred Majority:

(i) incur any Indebtedness, or issue any equity security, ranking senior to, or pari passu with, the Series B Preferred Units with respect to the right to receive assets of the Company in connection with any distribution by, or liquidation of, the Company, other than any Indebtedness permitted to be incurred under the Exit Credit Agreement;

(ii) incur any Indebtedness, or issue any equity security, of any Subsidiary of the Company, other than (a) the incurrence of Indebtedness, or the issuance equity securities, solely to the Company or any of its wholly owned Subsidiaries, or (b) the incurrence of Indebtedness permitted under the Exit Credit Agreement;

(iii) declare or pay any distribution or dividend on any equity interests in the Company or any of its Subsidiaries, other than (a) distributions or dividends paid or payable solely to the Company or any of its wholly-owned Subsidiaries, (b) tax distributions by or to the Company or to any wholly-owned Subsidiary of the Company, (c) distributions on the Series B Preferred Units in connection with the redemption thereof, or (d) distributions on the Series B Preferred Units and the Series A Preferred Units pursuant to the Series B PIK Accrual or the Series A PIK Accrual, as applicable;

(iv) redeem or repurchase any equity securities of the Company or any of its Subsidiaries other than (a) redemptions of Preferred Units as provided in this Agreement or (b) in accordance with the terms of any Approved Issuance, redemptions of equity interests issued pursuant to such Approved Issuance, or (c) redemptions of equity securities held by any director, officer or employee of the Company or any of its Subsidiaries in connection with their termination of employment or service for a purchase price equal to, unless otherwise provided in any applicable severance or incentive plan agreement approved by the Board, the lesser of (1) cost and (2) fair market value;

(v) amend or modify any of the rights, preferences or privileges of the Series B Preferred Units; or

(vi) [take any actions prohibited by the "Negative Covenants" in the Exit Credit Agreement as in effect on the date hereof.][3]

(c) Refinancing Exception. Notwithstanding anything to the contrary contained in this Agreement, in no event shall any approval of any class or series of Units be required for the incurrence of any Indebtedness to, whether in connection with an exchange or otherwise, (a) refinance in full all obligations (including accrued and unpaid interest, premiums, and all other fees and expenses) and undrawn commitment amounts then outstanding under the Exit Credit Agreement (such refinancing debt, the "Exit Facility Refinancing Debt") or (b) refinance in full all obligations (including accrued and unpaid interest, premiums, and all other fees and expenses) and undrawn commitments amounts then outstanding under any Exit Facility Refinancing Debt (such refinancing debt, the "Successor Refinancing Debt"); provided that (i) the aggregate principal amount of any Exit Facility Refinancing Debt shall not exceed the aggregate amount of all obligations (including accrued and unpaid interest, premiums, and all other fees and expenses) and undrawn commitments amounts then outstanding under the Exit Credit Agreement that are so refinanced plus the reasonable fees and expenses incurred in connection with the Exit Facility Refinancing Debt, (ii) the aggregate principal amount of any Successor Refinancing Debt shall not exceed the aggregate amount of all obligations (including accrued and unpaid interest, premiums, and all other fees and expenses) and undrawn commitment amounts then outstanding under the Exit Facility Refinancing Debt or Successor Refinancing Debt (as applicable) that are so refinanced plus the reasonable fees and expenses incurred in connection with such Successor Refinancing Debt, (iii) the interest rate under any Exit Facility Refinancing Debt shall not exceed the interest rate (excluding default interest) under the Exit Credit Agreement that is in effect at the time of consummation of such refinancing, (iv) the interest rate under any Successor Refinancing Debt shall not exceed the interest rate (excluding default interest) under the Exit Facility Refinancing Debt or Successor Refinancing Debt (as applicable) that is in effect at the time of consummation of such refinancing, and (v) except as otherwise approved by the holders of a majority of the Series B Preferred Units outstanding, the terms of any Exit Facility Refinancing Debt or Successor Refinancing Debt shall not contain any restrictions on the ability of the Company to redeem or pay cash distributions on, or the ability of the Company and/or its Subsidiaries to fund redemptions or cash distributions in respect of, the Preferred Units that are more restrictive than

[3] **Note to Draft**: To be updated to mirror the language in the Exit Credit Agreement.

the restrictions under the Exit Credit Agreement on the ability of the Company to redeem or pay cash distributions on, or the ability of the Company and/or its Subsidiaries to fund redemptions or cash distributions in respect of, the Preferred Units.

3.7 Conversion of Preferred Units.

(a) Optional Conversion. Each holder of a Preferred Unit may elect, at any time, to convert any or all of such holder's Preferred Units into that number of fully paid and non-assessable Common Units as determined by multiplying the number of Preferred Units to be converted by the quotient obtained by dividing the Preferred Original Price (as set forth in Section 3.7(c)) for such Preferred Unit by the Conversion Price (as set forth in Section 3.7(c) and as may be adjusted in accordance with Section 3.7(e)) in effect on the Conversion Date.

(b) Automatic Conversion. Each Preferred Unit shall automatically be converted into that number of fully paid and non-assessable Common Units as is determined by dividing (i) with respect to each Series A Preferred Unit, the Preferred Original Price for such Series A Preferred Unit by the Conversion Price (as set forth in Section 3.7(c) and as may be adjusted in accordance with Section 3.7(e)) in effect on the Conversion Date, immediately upon the closing of a Qualified IPO, and (b) with respect to each Series B Preferred Unit, the Preferred Original Price for such Series B Preferred Unit (assuming that it had remained outstanding through the later of the Outside Redemption Date and the date of a Qualified IPO) by the Conversion Price (as set forth in Section 3.7(c) and as may be adjusted in accordance with Section 3.7(e)) in effect on the Conversion Date, immediately upon the closing of a Qualified IPO.

(c) Preferred Original and Conversion Price. The "Preferred Original Price" shall mean at any given time, in respect of the Series A Preferred Units, the Series A Per Unit Price then in effect, and in respect of the Series B Preferred Units, the Series B Per Unit Price then in effect. The "Conversion Price" shall be $1.00 per Preferred Unit, as adjusted and readjusted from time to time in accordance with Section 3.7(e) below.

(d) Mechanics of Conversion. The "Conversion Date" with respect to any conversion of Preferred Units shall mean: (i) in the case of a conversion pursuant to Section 3.7(a), the date upon which written notice of such conversion election is received by the Company; and (ii) in the case of a conversion pursuant to Section 3.7(b), the close of business on the date immediately prior to the closing date of the Qualified IPO. To the extent that Units are certificated, the Company shall, as soon as practicable thereafter, issue and deliver to the holder or holders of the Preferred Units so converted, a certificate or certificates for the number of Common Units to which such holder or holders shall be entitled as set forth above. From and after the Conversion Date, the Person(s) entitled to receive the Common Units issuable upon such conversion shall be treated for all purposes as the record holder(s) of such Common Units on such date, and the Preferred Units so converted shall be deemed cancelled and extinguished.

(e) Certain Adjustments.

(i) Adjustments for Reorganization, Reclassification, Subdivision, Combination or Similar Events. If at any time and from time to time the Common Units shall be

changed into the same or a different number of Common Units or any other class or series of Units or other securities or property (whether by capital reorganization, reclassification, subdivision, combination or otherwise), then each Preferred Unit shall thereafter be convertible into the number of Common Units or other Units, securities or property to which a holder of the number of Common Units of the Company deliverable upon conversion of such Preferred Units shall have been entitled upon such reorganization, reclassification, subdivision, combination or other event (such conversion deemed to have taken place immediately before the reorganization, reclassification, subdivision, combination or other event).

(ii) Conversion Price Adjustments.

(A) Subject to Section 3.7(e)(ii)(B), if at any time after the Effective Date the Company issues or sells or, in accordance with Section 3.7(e)(iii), is deemed to have issued or sold, any Units (other than Excluded Securities) without consideration or for a consideration per Common Unit less than the Preferred Original Price in effect immediately prior to the time of such issuance or sale (or deemed issuance or sale), the Conversion Price shall, concurrently with such issue, forthwith be lowered to a price (calculated to the nearest one-hundredth of a cent) equal to the quotient obtained by dividing (x) an amount equal to the sum of (1) the total number of Units outstanding, on a Fully Diluted Basis, immediately prior to such issuance, multiplied by the Conversion Price in effect immediately prior to such issuance, and (2) the consideration received by the Company upon such issuance; by (y) an amount equal to the sum of (1) the total number of Units outstanding on a Fully Diluted Basis immediately prior to such issuance, and (2) the total number of additional Units (other than Excluded Securities) issued (or deemed to have been issued as provided herein) in connection with such issuance; provided that if such issuance or deemed issuance was without consideration, then the Company shall be deemed to have received an aggregate of $0.01 of consideration for all such Units issued or deemed to be issued.

(B) Notwithstanding anything to the contrary contained in this Agreement, the provisions of Section 3.7(e)(ii)(A) shall not apply to, and there shall be no adjustment in any respect to the Conversion Price: (i) as a result of or in connection with any issuance or deemed issuance of Excluded Securities, or (ii) as provided in any written waiver of the provisions of Section 3.7(e)(ii)(A) approved by the holders of a majority of the then outstanding Preferred Units.

(iii) Effect on Conversion Price of Certain Events. For purposes of determining the adjusted Conversion Price pursuant to Section 3.7(e)(ii) above, the following shall be applicable.

(A) Issuance of Options. If the Company in any manner grants, sells or issues any Options (other than only those granted, sold or issued pursuant to incentive arrangements approved by the Board of Managers in accordance with this Agreement) and the price per Common Unit for which Common Units are issuable upon the exercise of such Options, or upon conversion or exchange of

any Convertible Securities issuable upon exercise of such Options, is less than the Conversion Price in effect immediately prior to the time of the granting or sale of such Options, then the Common Units issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities issuable upon the exercise of such Options shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting or sale of such Options for the price per Common Unit for which Common Units are issuable thereunder. For purposes of this Section 3.7(e)(iii), the "price per Common Unit for which Common Units are issuable" shall be determined by dividing (1) the total amount, if any, received or receivable by the Company as consideration for the granting or sale of such Options, plus the minimum aggregate amount of additional consideration payable to the Company upon exercise of all such Options, plus in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable to the Company upon the issuance or sale of such Convertible Securities and the conversion or exchange thereof, by (2) the total maximum number of Common Units issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options.

(B) Issuance of Convertible Securities. If the Company in any manner grants, sells or issues any Convertible Securities (other than only those granted, sold or issued pursuant to incentive arrangements approved by the Board of Managers in accordance with this Agreement) and the price per Common Unit for which Common Units are issuable upon conversion or exchange thereof is less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the Common Units issuable upon conversion or exchange of such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale of such Convertible Securities for such price per Common Unit for which Common Units are issuable thereunder. For the purposes of this Section 3.7(e)(iii), the "price per Common Unit for which Common Units are issuable" shall be determined by dividing (1) the total amount received or receivable by the Company as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the conversion or exchange thereof into Common Units, by (2) the total maximum number of Common Units issuable upon the conversion or exchange of all such Convertible Securities.

(C) Change in Option Price or Conversion Price. If (1) the purchase price provided for in any Options (other than only those granted, sold or issued pursuant to incentive arrangements approved by the Board of Managers in accordance with this Agreement), (2) the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities (other than only those granted, sold or issued pursuant to incentive arrangements approved by the Board of Managers in accordance with this Agreement), or (3) the rate at which any Convertible Securities (other than only those granted, sold or issued pursuant

to incentive arrangements approved by the Board of Managers in accordance with this Agreement) are convertible into or exchangeable for Common Units changes at any time, the Conversion Price in effect at the time of such change shall immediately be adjusted to the Conversion Price which would have been in effect at such time had such outstanding Options or Convertible Securities provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time such Options or Convertible Securities were initially granted, issued or sold. For purposes of this Section 3.7(e)(iii), if the terms of any Option or Convertible Security which was outstanding as of the date of issuance of any Preferred Units are changed in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the Common Units deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such change; provided that no such change shall at any time cause the Conversion Price hereunder to be increased.

(D) Treatment of Expired Options and Unexercised Convertible Securities. Upon the expiration of any Option or the termination of any right to convert or exchange any Convertible Security, in either case, for which an adjustment to the Conversion Price was previously made in respect of the issuance thereof, without the exercise of any such Option or right, the Conversion Price then in effect hereunder shall be adjusted immediately to the Conversion Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Security, to the extent outstanding immediately prior to such expiration or termination, never been issued. For purposes of this Section 3.7(e)(iii), the expiration or termination of any Option or Convertible Security which was outstanding as of the date of issuance of any Preferred Units shall not cause the Conversion Price hereunder to be adjusted unless, and only to the extent that, a change in the terms of such Option or Convertible Security caused it to be deemed to have been issued after the date of issuance of the Preferred Units.

(E) Calculation of Consideration Received. If any Common Unit, Option or Convertible Security is issued or sold or deemed to have been issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Company therefor (net of any discounts, commissions and related expenses). If any Common Unit, Option or Convertible Security is issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Company shall be the Fair Market Value of such consideration as of the date of receipt. If any Common Unit, Option or Convertible Security is issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor shall be deemed to be the Fair Market Value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Unit, Option or Convertible Security, as the case may be.

(F) Treasury Shares. The number of Common Units outstanding at any given time shall not include Units owned or held by or for the account of the Company, and the disposition of any Units so owned or held shall be considered an issue or sale of Common Units.

(G) Record Date. If the Company takes a record of the holders of Common Units for the purpose of entitling them to (a) receive a dividend or other distribution payable in Common Units, Options or in Convertible Securities or (b) subscribe for or purchase Common Units, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the Common Units deemed to have been issued or sold upon the declaration of such dividend or upon the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(iv) Certificates as to Adjustments. As soon as practicable after the occurrence of an adjustment or readjustment pursuant to this Section 3.7(e), the Company shall compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to the holders of Preferred Units a certificate executed by a duly authorized Officer or Manager setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, as soon as practicable after receipt of the written request at any time of any holders of Preferred Units, furnish or cause to be furnished to such holder a like certificate setting forth such adjustments and readjustments and the number of Common Units and the amount, if any, of other property that at the time would be received upon the conversion of the Preferred Units.

3.8 Unit Certificates.

(a) Ownership of Units may, but need not, be evidenced by certificates similar to customary stock certificates. Initially, Units shall be uncertificated, but the Board may determine to certificate all or any Units at any time. In such event, the Board shall prescribe the forms of certificates to be issued by the Company including the forms of legends to be affixed thereto. Any such certificate shall be delivered by the Company or its designee to the applicable record owner of the Units represented by such certificate. Certificates evidencing Units will provide that they are governed by Article 8 of the Uniform Commercial Code. Certificates need not bear a seal of the Company but shall be signed by any Person authorized by the Board to sign such certificates who shall certify the Units represented by such certificate. Books and records reflecting the record ownership of the Units shall be kept by the Company or its designee. In the event any Officer who shall have signed, or whose facsimile signature or signatures shall have been placed upon, any such certificate or certificates shall have ceased to be such Officer before such certificate is used by the Company, such certificate may nevertheless be issued by the Company with the same effect as if such person were such Officer at the date of issue. The Board may determine the conditions upon which a new certificate may be issued in place of a certificate which is alleged to have been lost, stolen or destroyed and may, in its discretion, require the owner of such certificate or its legal representative to give bond, with sufficient surety, to indemnify the Company against any and all losses or claims that may arise by reason of the issuance of a new certificate in the place of the one so lost, stolen or destroyed. Each certificate shall bear substantially the following legend form in addition to any other legend

required by law or by agreement with the Company reflecting the restrictions of the Transfer of such Units contained in this Agreement:

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS AND MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, OR AN EXEMPTION THEREFROM AND, IN EACH CASE, IN COMPLIANCE WITH APPLICABLE FEDERAL AND STATE SECURITIES LAWS.
>
> THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO VARIOUS CONDITIONS, INCLUDING CERTAIN RESTRICTIONS ON SALE, DISPOSITION OR TRANSFER AS SET FORTH IN THE [AMENDED AND RESTATED] LIMITED LIABILITY COMPANY AGREEMENT OF SOUTHCROSS ENERGY PARTNERS LLC (THE "COMPANY"), AS AMENDED FROM TIME TO TIME (THE "LLC AGREEMENT"). NO REGISTRATION OR TRANSFER OF THESE SECURITIES WILL BE MADE ON THE BOOKS OF THE COMPANY UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPLIED WITH. THE COMPANY WILL FURNISH WITHOUT CHARGE, UPON WRITTEN REQUEST TO THE COMPANY AT ITS PRINCIPAL PLACE OF BUSINESS, TO EACH HOLDER OF RECORD OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE, A COPY OF THE LLC AGREEMENT CONTAINING THE ABOVE-REFERENCED RESTRICTIONS ON TRANSFERS OF SECURITIES.
>
> THE HOLDER OF THIS CERTIFICATE BY ACCEPTANCE OF THIS CERTIFICATE AGREES TO BE BOUND BY THE PROVISIONS OF THE LLC AGREEMENT, INCLUDING RESTRICTIONS RELATING TO THE EXERCISE OF VOTING RIGHTS RELATED THERETO."

(b) In the event that the restrictive legend set forth in Section 3.8(a) above has ceased to be applicable to the Units owned by a Member, the Company or its designee shall provide such Member, at his, her or its request, with new certificates for such Units not bearing the legend with respect to which the restriction has ceased and terminated. In connection with and following a Qualified IPO, the Company or its designee shall provide each Member, at his, her or its request, with new certificates not bearing the legend for all Units held by such Member.

SECTION 4. DISTRIBUTIONS

4.1 Preferred Distributions; Interim Distributions.

(a) Distributions in respect of each Series A Preferred Unit will be payable: (i) no later than the 30th day after the last day of each fiscal quarter (provided, if such 30th day is not a Business Day, then the first Business Day immediately following such 30th day) (each, a "Distribution Date"), (ii) for so long as any Series B Preferred Units are outstanding, by adding the payment amount to the Series A Per Unit Price then in effect (the "Series A PIK Accrual"), and, following such time that no Series B Preferred Units are outstanding, at the option of the Company, either in cash (the "Series A Cash Option") or the Series A PIK Accrual (the "Series A PIK Option"), (iii) accrue from day to day at a per annum rate applied to the Series A Per Unit Price then in effect equal to (A) with respect to any distribution paid in cash, at the option of the Company, (x) three-month Adjusted LIBO Rate (as defined in the Exit Credit Agreement and subject to a floor of 1.00%) plus 9.00% or (y) Alternate Base Rate (as defined in the Exit Credit Agreement) plus 8.00% from and including the Effective Date through and including the Distribution Date, and (B) with respect to any distribution for which the Series A PIK Option shall have been exercised, at the option of the Company, (1) three-month Adjusted LIBO Rate (as defined in the Exit Credit Agreement and subject to a floor of 1.00%) plus 11.00%, or (2) the Alternate Base Rate (as defined in the Exit Credit Agreement) plus 10.00% from and including the Effective Date through and including the Distribution Date (subject to proportionate and equitable adjustments to reflect any non-cash, Unit or other equity interest dividend or subdivision, combination, recapitalization or the like of Units or other equity interests of the Company affecting such Series A Preferred Unit, "Series A Preferred Distributions"); provided that, to the extent an Alternative Interest Rate Election Event (as defined in the Exit Credit Agreement) has occurred, the LIBO Rate (as defined in the Exit Credit Agreement) shall be adjusted pursuant to the procedures set forth in Section 3.03 of the Exit Credit Agreement. The Series A Preferred Distributions shall accrue whether or not the Company has earnings or profits, whether or not there are funds legally available for the payment of such distributions and whether or not distributions are declared..

(b) Series B Preferred Distributions. Distributions in respect of each Series B Preferred Unit will be payable: (i) no later than each Distribution Date, (ii) by adding the payment amount to the Series B Per Unit Price then in effect (the "Series B PIK Accrual"); and (iii) accrue from day to day at a per annum rate equal to 15% applied to the Series B Per Unit Price then in effect from and including the Effective Date through and including the Distribution Date (subject to proportionate and equitable adjustments to reflect any non-cash, Unit or other equity interest dividend or subdivision, combination, recapitalization or the like of Units or other equity interests of the Company affecting such Series B Preferred Unit, "Series B Preferred Distributions"). Series B Preferred Distributions shall accrue whether or not the Company has earnings or profits, whether or not there are funds legally available for the payment of such distributions and whether or not distributions are declared. Notwithstanding anything to the contrary herein, the Company shall not declare or pay any distributions (other than tax distributions) on any equity interests in the Company unless and until all accrued and unpaid distributions in respect of the Series B Preferred Units shall have been paid.

(c) Interim Distributions. Subject to Sections 3.6, 4.1(a) and 4.1(b) the Board may cause the Company to make such other distributions at such times and in such amounts as is determined by the Board provided that any such distributions shall be made on a pro rata basis determined by reference to the number of Units held by each such Member.

4.2 Liquidation.

(a) Subject to Section 4.2(b) and Section 16.3(c), distributions in respect of a Liquidation (including a Deemed Liquidation Event) shall be made (which in the case of a Deemed Liquidation Event, shall be made, subject to Section 4.2(b), upon such Deemed Liquidation Event):

(i) First, in respect of each Series B Preferred Unit, to the holder thereof, up to an aggregate amount equal to the greater of (A) the Series B Per Unit Price then in effect, plus any and all accrued and unpaid distributions thereon and (B) the amount payable in respect of such Series B Preferred Unit assuming it had remained outstanding through the Outside Redemption Date (determined on a pro rata basis as compared to all holders of Series B Preferred Units);

(ii) Second, in respect of each Series A Preferred Unit, to the holder thereof, up to an aggregate amount equal to the Series A Per Unit Price then in effect, plus any and all accrued and unpaid distributions thereon (determined on a pro rata basis as compared to all holders of Series A Preferred Units);

(iii) Thereafter, the remainder to each holder of Common Units on a pro rata basis determined by reference to the number of Common Units held by each such holder. Notwithstanding anything else contained herein to the contrary, if, assuming (1) no distributions were made pursuant to Section 4.2(a)(i) and 4.2(a)(ii) and (2) conversion of all Preferred Units into Common Units, the aggregate amount of distributions that each holder of the Preferred Units would receive pursuant to this Section 4.2(a)(iii) exceeds the aggregate amount of distributions that it would otherwise receive pursuant to Section 4.2(a)(i) and 4.2(a)(ii), then Section 4.2(a)(i) and 4.2(a)(ii) shall be disregarded and each Preferred Unit shall be deemed to have converted to a Common Unit for purposes of this Section 4.2(a)(iii). For greater certainty, in no event shall any holder of Preferred Units receive distributions both in respect of any Series B Preferred Units held by such holder pursuant to Section 4.2(a)(i) or Series A Preferred Units pursuant to Section 4.2(a)(ii), on the one hand, and Section 4.2(a)(iii), on the other hand.

(b) In the event of a Deemed Liquidation Event, unless the Board elects otherwise in writing, if any portion of the consideration payable to the Members of the Company is placed into escrow and/or is payable to the Members of the Company subject to contingencies, then the definitive agreement with respect to such Deemed Liquidation Event shall provide that (i) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the "Effective Date Consideration") shall be allocated among the Members in accordance with Section 4.2 as if the Effective Date Consideration were the only consideration payable in connection with such Deemed Liquidation Event and (ii) any additional consideration which becomes payable to the Members of the Company upon release from escrow or

satisfaction of contingencies shall be allocated among the Members as the difference between (A) the total consideration payable to such Member in connection with such Deemed Liquidation Event (including all amounts released from escrow and/or no longer subject to contingencies) allocated to such Member in accordance with Section 4.2 minus (B) the payment previously made to such Member from the Effective Date Consideration.

4.3 Distributions of Securities. The Board is authorized, in its sole discretion, to make distributions to the Members in the form of Securities or other property received or otherwise held by the Company (on a pro rata basis); provided, however, that, in the event of any such non-cash distribution, such Securities or other property shall be valued at the Fair Market Value and shall be distributed to the Members in the same proportion that cash received upon the sale of such Securities or other property at such Fair Market Value would have been distributed pursuant to Section 4.1; provided, further, that, in connection with any such non-cash distribution of equity securities of any Subsidiary of the Company that are not publicly traded securities, such Subsidiary and the Members receiving such distribution shall enter into agreements which shall, as closely as practicable as determined by the Board, give effect to the terms and provisions as set forth in this Agreement and the other agreements entered into in connection herewith.

4.4 Restricted Distributions. Notwithstanding anything to the contrary contained herein, the Company, and the Manager on behalf of the Company, shall not make distributions to any Member on account of its Units if such distribution would violate the Act or other applicable law.

4.5 Withholding Tax Payments and Obligations. In the event that withholding taxes are paid or required to be paid in respect of distributions made by the Company, such payments or obligations shall be treated as follows:

(a) Payments by the Company. The Company is authorized to withhold from any payment made to, or any distributive share of, a Member, any taxes required by law to be withheld, and in such event, such taxes shall be treated as if an amount equal to such withheld taxes had been paid to the Member rather than paid over to the taxing authority.

(b) Overwithholding. The Company shall not be liable for any excess taxes withheld in respect of any Member's interest in the Company, and, in the event of overwithholding, a Member's sole recourse shall be to apply for a refund from the appropriate governmental authority.

(c) Indemnity. In the event that the Company or any Affiliate thereof becomes liable as a result of a failure to withhold and remit taxes in respect of any Member, then, without limitation of any other term set forth herein, such Member shall indemnify and hold harmless the Company in respect of all taxes, including interest and penalties, and any expenses incurred in any examination, determination, resolution and payment of such liability. The provisions contained in this Section 4.5(c) shall survive the termination of the Company and the withdrawal of any Member.

4.6 Redemption of Preferred Units.

(a) Mandatory Redemption (Excess Cash Balance). If on the last business day of any June or December of any fiscal year of the Company, the Company and its Subsidiaries have any Excess Cash Balance, the Company shall apply such Excess Cash Balance (the "Semi-Annual Excess Cash Prepayment") within five (5) Business Days (as defined in the Exit Credit Agreement) following such date as follows:

(i) First, to prepay then outstanding Revolving Loans (as defined in the Exit Credit Agreement),

(ii) Second, provided that no default or event of default under the Exit Credit Agreement has occurred and is continuing or would result therefrom or after giving effect thereto, to redeem as many Series B Preferred Units as possible for an amount per Series B Preferred Unit equal to the greater of (A) the Series B Per Unit Price then in effect with respect to such Series B Preferred Unit, plus any and all accrued and unpaid distributions thereon, and (B) the amount payable in respect of such Series B Preferred Unit assuming it had remained outstanding through the Outside Redemption Date; provided, however, any holder of Series B Preferred Units may, at its option, decline to have redeemed some or all of the Series B Preferred Units offered by the Company to be redeemed pursuant to this Section 4.6(a)(ii); and

(iii) Thereafter, following such time that all amounts pursuant to Section 4.6(a)(ii) above have been paid, to prepay then outstanding Term Loans (as defined in the Exit Credit Agreement).

(iv) Certain Definitions. As used herein, the following terms have the definitions set forth below:

"Excess Cash Balance" means, at any time, the amount by which (A) the difference between (x) Unrestricted Cash (other than certain excluded funds in respect of issued checks and initiated wires and cash and cash equivalents in accounts designated for payroll or employee benefits), less (y) the sum of (1) the amount of projected Non-Growth Cap-Ex for the immediately succeeding six (6) month period set forth in the most recently delivered annual budget, plus (2) scheduled payments of interest by the Company in respect of the Loans (as defined in the Exit Credit Agreement) for the immediately succeeding six (6) month period, plus (3) solely with respect to the Semi-Annual Excess Cash Prepayment with respect to the last business day of December of any fiscal year, the amount of payments estimated to be made by the Company in cash (as determined in good faith by the Company) on account of real property tax liabilities of the Company and its Subsidiaries during the immediately succeeding six (6) month period, exceeds (B) $10,000,000.

"Non-Growth CapEx" means capital expenditures of the type categorized as "Maintenance CapEx" or "Other CapEx" (but excluding "Growth CapEx") on the Approved Budgets (as defined in the Final DIP Order) provided by the Company and the affiliated debtors under the Plan.

"Unrestricted Cash" means cash and/or cash equivalents of the Company or its Subsidiaries that would not appear as "restricted" on a consolidated balance sheet of the Company and its Subsidiaries (for the avoidance of doubt, excluding cash and cash equivalents in the Cash Collateral Accounts or the Alternate Cash Collateral (each as defined in the Exit Credit Agreement)).

(b) Mandatory Redemption (Outside Redemption Date). On the sixth anniversary of the Effective Date (the "Outside Redemption Date") the Company shall redeem the Preferred Units as follows:

(i) First, the Series B Preferred Units for an amount per Series B Preferred Unit equal to the Series B Per Unit Price then in effect with respect to such Series B Preferred Unit, plus any and all accrued and unpaid distributions thereon; and

(ii) Thereafter, following such time that no Series B Preferred Units are outstanding, the Series A Preferred Units for an amount per Series A Preferred Unit equal to the Series A Per Unit Price then in effect with respect to such Series A Preferred Unit, plus any and all accrued and unpaid distributions thereon.

(c) Mandatory Redemption Notice and Payment. The Company shall provide written notice to the holders of Preferred Units (each, a "Mandatory Redemption Notice") of its mandatory redemption of such Preferred Units on or promptly after the date of such mandatory redemption (the "Mandatory Redemption Date"); *provided that*, in the case of a mandatory redemption in connection with the Outside Redemption Date, the Company shall provide such Mandatory Redemption Notice at least 10 business days prior to, and no more than 30 business days prior to, the Mandatory Redemption Date. Each Mandatory Redemption Notice shall state: (i) the Mandatory Redemption Date; and (ii) the Mandatory Redemption Price with respect to such Preferred Units. The "Mandatory Redemption Price" (A) per Series B Preferred Unit shall be an amount determined in accordance with Section 4.6(b)(i), and (B) per Series A Preferred Unit shall be an amount determined in accordance with Section 4.6(b)(ii). The Mandatory Redemption Notice shall be certified by an officer of the Company and shall provide a calculation of the applicable Mandatory Redemption Price with respect to the Preferred Unites to be redeemed. On each Mandatory Redemption Date, the applicable Mandatory Redemption Price shall be paid by the Company to the holders of the relevant Preferred Units. The assignment and transfer to the Company of Preferred Units pursuant to this Section 4.6(c) shall be made at the closing on the Mandatory Redemption Date, through the execution and delivery by each holder of the Preferred Units being redeemed of a customary redemption agreement; provided, that notwithstanding any failure by such holder of Preferred Units (or Affiliate thereof) to execute or deliver such redemption agreement or return the Preferred Units subject to such redemption or purchase, if applicable, such Preferred Units shall be deemed to be automatically redeemed or purchased upon payment of the applicable Mandatory Redemption Price therefor as provided herein. Without limiting in any respect the provisions of Section 4.6(g), following the redemption or purchase by the Company of any Preferred Units from any holders of Preferred Unit (and any applicable Affiliate thereof) and the making of the payment therefor by the Company, each such holder of Preferred Units (and Affiliate) agrees to execute such other documents reasonably requested by the Company that may be necessary to further perfect the ownership of the Preferred Units that shall have been redeemed or purchased by the Company

under this Section 4.6(c). The closing of any redemption of Preferred Units pursuant to this Section 4.6(c) shall be held at the principal office of the Company.

(d) Failure to Timely Redeem. In the event the Company fails to redeem any Preferred Units subject to a Mandatory Redemption Notice on a Mandatory Redemption Date for any reason and without limitation of any other rights or remedies available hereunder to such holders of Preferred Unit that arise in connection therewith or as a result thereof and notwithstanding anything contained herein to the contrary,

(i) the accrual rate then in effect of the Preferred Distribution in respect of such Preferred Unit pursuant to Section 4.1 shall be increased by 1% on the first day of each fiscal quarter of the Company following the applicable Mandatory Redemption Date; and

(ii) if the Company has not redeemed all such Preferred Units within 30 days after such Mandatory Redemption Date, the Requisite Preferred Majority shall have the right to (A) designate and appoint a number of members to the Board (each, a "Preferred Manager") such that the Preferred Managers would constitute a majority of the Board, and to the extent necessary to effect the foregoing, increase the size of the Board accordingly, and/or (B) cause the Company to enter into and consummate an Approved Sale.

(e) Optional Redemption of Preferred Units. Subject to the provisions of Sections 4.6(a), (b), (c) and (d), provided that no default or event of default under the Exit Credit Agreement has occurred and is continuing or would result therefrom or after giving effect thereto, the Company may at any time and from time to time offer to redeem, in whole or in part, the outstanding Preferred Units as follows (provided that, in the event of any offer to redeem any class or series of Preferred Units in part, the Company shall offer to all holders of such class or series of Preferred Units to redeem the same proportion of such class or series of Preferred Units held thereby):

(i) First, Series B Preferred Units for an amount per Series B Preferred Unit equal to the greater of (A) the Series B Per Unit Price then in effect with respect to such Series B Preferred Unit, plus any and all accrued and unpaid distributions thereon, and (B) the amount payable in respect of such Series B Preferred Unit assuming it had remained outstanding through the Outside Redemption Date; provided, however, any holder of Series B Preferred Units may, at its option, decline to have redeemed some or all of the Series B Preferred Units offered by the Company to be redeemed pursuant to this Section 4.6(e)(i); and

(ii) Thereafter, following such time that all amounts pursuant to Section 4.6(e)(i) above have been paid, Series A Preferred Units for an amount per Series A Preferred Unit equal to the Series A Per Unit Price then in effect with respect to such Series A Preferred Unit, plus any and all accrued and unpaid distributions thereon; provided, however, that any holder of Series A Preferred Units may, at its option, decline to have redeemed some or all of the Series A Preferred Units offered by the Company to be redeemed pursuant to this Section 4.6(e)(ii)

(f) Optional Redemption Notice and Payment. The Company shall provide written notice to the holders of Preferred Units (each, a "Optional Redemption Notice") of its offer to redeem such Preferred Units at least 10 business days prior to, and no more than 30 business days prior to the redemption date (the "Optional Redemption Date") set forth in such Optional Redemption Notice. Each Optional Redemption Notice shall state: (i) the Optional Redemption Date; and (ii) the Optional Redemption Price with respect to such Preferred Units. The "Optional Redemption Price" (A) per Series B Preferred Unit shall be an amount determined in accordance with Section 4.6(e)(i), and (B) per Series A Preferred Unit shall be an amount determined in accordance with Section 4.6(e)(ii). The Optional Redemption Notice shall be certified by an officer of the Company and shall provide a calculation of the applicable Optional Redemption Price with respect to the Preferred Units to be redeemed. On each Optional Redemption Date, the applicable Optional Redemption Price shall be paid by the Company to the holders of the relevant Preferred Units. The assignment and transfer to the Company of Preferred Units pursuant to this Section 4.6(f) shall be made at the closing on the Optional Redemption Date, through the execution and delivery by each holder of the Preferred Units being redeemed of a customary redemption agreement; provided, that notwithstanding any failure by such holder of Preferred Units (or Affiliate thereof) to execute or deliver such redemption agreement or return the Preferred Units subject to such redemption or purchase, if applicable, such Preferred Units shall be deemed to be automatically redeemed or purchased upon payment of the applicable Optional Redemption Price therefor as provided herein. Without limiting in any respect the provisions of Section 4.6(g), following the redemption or purchase by the Company of any Preferred Units from any holders of Preferred Unit (and any applicable Affiliate thereof) and the making of the payment therefor by the Company, each such holder of Preferred Units so redeemed agrees to execute such other documents reasonably requested by the Company that may be necessary to further perfect the ownership of the Preferred Units that shall have been redeemed or purchased by the Company under this Section 4.6(f). The closing of any redemption of Preferred Units pursuant to this Section 4.6(f) shall be held at the principal office of the Company.

(g) Effect of Redemption. Notwithstanding anything to the contrary contained in this Agreement, for the avoidance of doubt, any Preferred Unit that shall have been redeemed (or deemed redeemed) pursuant to foregoing provisions of this Section 4.6 shall be deemed cancelled, extinguished and retired in all respects immediately following such redemption (or deemed redemption) and shall not be reissued in any respect.

SECTION 5. ALLOCATIONS

5.1 Capital Accounts. A separate capital account (a "Capital Account") shall be established and maintained for each Member in accordance with the requirements of Treasury Regulations Section 1.704-1(b)(2)(iv).

5.2 Allocations of Profits and Losses. After giving effect to the allocations under Section 5.3, Profits and Losses (and to the extent determined necessary and appropriate by the Board to achieve the resulting Capital Account balances described below, any allocable items of gross income, gain, loss and expense includable in the computation of Profits and Losses) for each Allocation Period shall be allocated among the Members during such Allocation Period, in such a manner as shall cause the Capital Accounts of the Members (as adjusted to reflect all

allocations under Section 5.3. and all Distributions through the end of such Allocation Period) to equal, as nearly as possible, (a) the amount such Members would receive if all assets of the Company on hand at the end of such Allocation Period were sold for cash equal to their Book Values, all liabilities of the Company were satisfied in cash in accordance with their terms (limited in the case of nonrecourse liabilities to the Book Value of the property securing such liabilities) and all remaining or resulting cash were distributed to the Members under Section 4.2, *minus* (b) such Member's share of Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets, and the amount any such Member is treated as obligated to contribute to the Company, computed immediately after the hypothetical sale of assets.

5.3 Special Allocations. The following allocations shall be made in the following order:

(a) Nonrecourse Deductions shall be allocated to the Members in any manner determined by the Board and permissible under the Treasury Regulations.

(b) Member Nonrecourse Deductions attributable to Member Nonrecourse Debt shall be allocated to the Members bearing the Economic Risk of Loss for such Member Nonrecourse Debt as determined under Treasury Regulations Section 1.704-2(b)(4). If more than one Member bears the Economic Risk of Loss for such Member Nonrecourse Debt, the Member Nonrecourse Deductions attributable to such Member Nonrecourse Debt shall be allocated among the Members according to the ratio in which they bear the Economic Risk of Loss. This Section 5.3(b) is intended to comply with the provisions of Treasury Regulations Section 1.704-2(i) and shall be interpreted consistently therewith.

(c) Notwithstanding any other provision hereof to the contrary, if there is a net decrease in Minimum Gain for an Allocation Period (or if there was a net decrease in Minimum Gain for a prior Allocation Period and the Company did not have sufficient amounts of income and gain during prior periods to allocate among the Members under this Section 5.3(c)), items of income and gain shall be allocated to each Member in an amount equal to such Member's share of the net decrease in such Minimum Gain (as determined pursuant to Treasury Regulations Section 1.704-2(g)(2)). This Section 5.3(c) is intended to constitute a minimum gain chargeback under Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(d) Notwithstanding any provision hereof to the contrary except Section 5.3(c) (dealing with Minimum Gain), if there is a net decrease in Member Nonrecourse Debt Minimum Gain for an Allocation Period (or if there was a net decrease in Member Nonrecourse Debt Minimum Gain for a prior Allocation Period and the Company did not have sufficient amounts of income and gain during prior periods to allocate among the Members under this Section 5.3(d)), items of income and gain shall be allocated to each Member in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain (as determined pursuant to Treasury Regulations Section 1.704-2(i)(4)). This Section 5.3(d) is intended to constitute a partner nonrecourse debt minimum gain chargeback under Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(e) Notwithstanding any provision hereof to the contrary except Section 5.3(a) and Section 5.3(b), no Losses or other items of loss or expense shall be allocated to any Member to the extent that such allocation would cause such Member to have a deficit balance in its Adjusted Capital Account (or increase any existing deficit balance in its Adjusted Capital Account) at the end of such Allocation Period. All Losses and other items of loss and expense in excess of the limitation set forth in this Section 5.3(e) shall be allocated to the Members who do not have a deficit balance in their Adjusted Capital Accounts in proportion to their relative positive Adjusted Capital Accounts but only to the extent that such Losses and other items of loss and expense do not cause any such Member to have a deficit in its Adjusted Capital Account.

(f) Notwithstanding any provision hereof to the contrary except Section 5.3(c) and Section 5.3(d), a Member who unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(*d*)(*4*), (*5*) or (*6*) shall be allocated items of income and gain (consisting of a *pro rata* portion of each item of income, including gross income, and gain for the Allocation Period) in an amount and manner sufficient to eliminate any deficit balance in such Member's Adjusted Capital Account as quickly as possible; provided, however, that an allocation pursuant to this Section 5.3(f) shall be made only if and to the extent that such Member would have a deficit Adjusted Capital Account balance after all other allocations provided for in this Section 5 have been tentatively made as if this Section 5.3(f) were not in this Agreement. This Section 5.3(f) is intended to constitute a qualified income offset under Treasury Regulations Section 1.704-1(b)(2)(ii)(*d*) and shall be interpreted consistently therewith.

(g) In the event that any Member has a deficit balance in its Adjusted Capital Account at the end of any Allocation Period, such Member shall be allocated items of Company gross income, and gain in the amount of such deficit as quickly as possible; provided, however, that an allocation pursuant to this Section 5.3(g) shall be made only if and to the extent that such Member would have a deficit balance in its Capital Account after all other allocations provided for in this Section 5.3 have been tentatively made as if Section 5.3(f) and this Section 5.3(g) were not in this Agreement.

(h) To the extent an adjustment to the adjusted tax basis of any Company properties pursuant to Code Section 734(b) (including any such adjustments pursuant to Treasury Regulations Section 1.734-2(b)(1)) is required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(*m*)(*2*) or 1.704-1(b)(2)(iv)(*m*)(*4*) to be taken into account in determining Capital Accounts as the result of a distribution to any Member in complete liquidation of such Member's Units, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be allocated to the Members in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(*m*)(*2*) if such Treasury Regulations Section applies, or to the Member to whom such distribution was made if Treasury Regulations Section 1.704-1(b)(2)(iv)(*m*)(*4*) applies.

5.4 Income Tax Allocations.

(a) All items of income, gain, loss and deduction for U.S. federal income tax purposes shall be allocated in the same manner as the corresponding item is allocated pursuant to Sections 5.2 or 5.3, except as otherwise provided in this Section 5.4.

(b) In accordance with the principles of Code Section 704(c) and the Treasury Regulations thereunder (including the Treasury Regulations applying the principles of Code Section 704(c) to changes in Book Values), income, gain, deduction and loss with respect to any Company property having a Book value that differs from such property's adjusted U.S. federal income tax basis shall, solely for U.S. federal income tax purposes, be allocated among the Members in order to account for any such difference using the "remedial method" under Treasury Regulations Section 1.704-3(d) or such other method or methods as determined by the Board to be appropriate and in accordance with the applicable Treasury Regulations.

(c) Any (i) recapture of depreciation or any other item of deduction shall be allocated, in accordance with Treasury Regulations Sections 1.1245-1(e) and 1.1254-5, to the Members who received the benefit of such deductions (taking into account the effect of remedial allocations) and (ii) recapture of grants or credits shall be allocated to the Members in accordance with applicable law.

(d) Tax credits of the Company shall be allocated among the Members as provided in Treasury Regulations Sections 1.704-1(b)(4)(ii) and 1.704-1(b)(4)(viii).

(e) Allocations pursuant to this Section 5.4 are solely for purposes of U.S. federal, state and local taxes and, except as otherwise specifically provided, shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Agreement.

(f) If, as a result of an exercise of a non-compensatory option to acquire an interest in the Company, a Capital Account reallocation is required under Treasury Regulations Section 1.704-1(b)(2)(iv)(*s*)(*3*), the Company shall make corrective allocations pursuant to Treasury Regulations Section 1.704-1(b)(4)(x).

5.5 Other Allocation Rules.

(a) All items of income, gain, loss, deduction and credit allocable to an interest in the Company that may have been Transferred shall be allocated between the transferor and the Transferee based on the portion of the Fiscal Year during which each was recognized as the owner of such interest, without regard to the results of Company operations during any particular portion of that year and without regard to whether cash distributions were made to the transferor or the Transferee during that year; provided, however, that this allocation must be made in accordance with a method permissible under Code Section 706 and the Treasury Regulations thereunder.

(b) The Members' proportionate shares of the "excess nonrecourse liabilities" of the Company, within the meaning of Treasury Regulations Section 1.752-3(a)(3), shall be allocated to the Members in any manner determined by the Board and permissible under the Treasury Regulations.

(c) The definition of Capital Account set forth in Section 5.1 and the allocations set forth in Section 5.3 and Section 5.4, and the preceding provisions of this Section 5.5 are intended to comply with the Treasury Regulations. If the Board determines that the determination of a Member's Capital Account or the allocations to a Member is not in compliance with the Treasury Regulations, the Board is authorized to make any appropriate adjustments.

SECTION 6. MEMBERS AND MEETINGS

6.1 Members. The ownership of the outstanding Units as of the Effective Date shall be listed on Schedule A to this Agreement and the ownership of the outstanding Units thereafter shall be listed on Schedule B to this Agreement (as such Schedule B may be amended or supplemented from time to time in accordance herewith). Upon the execution and delivery of this Agreement by each Person listed on Schedule A hereto as of the date hereof or pursuant to the Confirmation Order, each such Person shall become an Additional Company Security Holder and shall, subject to the Plan and Confirmation Order, receive the number and type of Units set forth opposite such Person's name on Schedule A hereto. From time to time, following the admission of any Additional Company Security Holders or Substitute Company Security Holders, or following the issuance, transfer or forfeiture of any Units, in each case, in accordance with this Agreement, Schedule B may be amended by the Company (without the consent or approval of any Member) to reflect such changes.

6.2 Withdrawals. Except as expressly provided elsewhere herein, including in Section 4, Section 11, and Section 16, no Member shall have the right (a) to withdraw as a Member from the Company, (b) to withdraw from the Company all or any part of such Member's Capital Contributions, (c) to receive property other than cash in return for such Member's Capital Contributions or (d) to receive any distribution from the Company.

6.3 Power of Members. The Members shall have the power to exercise any and all rights or powers granted to Members pursuant to the express terms of this Agreement and the Act. Except as otherwise expressly provided by this Agreement or required by the non-waivable provisions of the Act, no Member shall have the power to act for or on behalf of, or to bind, the Company.

6.4 Liability of the Members Generally. Except as required by non-waivable provisions of the Act, no Member shall be liable for any debts, liabilities, contracts or obligations of the Company whatsoever. Each of the Members acknowledges that its Capital Contributions are subject to the claims of any and all creditors of the Company to the extent provided by the Act and other applicable law.

6.5 Meetings of Members. Meetings of the Members may be called by the Board. The Members may vote, approve a matter or take any action by vote of the Members at a meeting, in person or by proxy, or without a meeting by written consent of the Members pursuant to Section 6.11.

6.6 Place of Meetings. The Board or a duly authorized committee thereof may designate any place, either within or outside of the State of Delaware, as the place of

meeting for any special meeting of the Members. If no designation is made, the place of meeting shall be the principal executive offices of the Company. Members may participate in a meeting by means of a conference telephone or electronic media by means of which all persons participating in the meeting can communicate concurrently with each other, and any such participation in a meeting shall constitute presence in person of such Member at such meeting.

6.7 Notice of Members' Meetings.

(a) In connection with the calling of any meeting of the Members, the Board may set a record date for determining the Members entitled to vote at such meeting. Written notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose for which the meeting is called shall be delivered not less than three (3) days nor more than fifty (50) days before the date of the meeting, either personally, by facsimile, email or by mail, by or at the direction of the Board to each Member entitled to vote thereat.

(b) Notice to Members shall be given in accordance with Section 19.8.

(c) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each Member holding Units entitled to vote at the meeting.

6.8 Waiver of Notice.

(a) When any notice is required to be given to any Member of the Company under the provisions of this Agreement, a waiver thereof in writing signed by the Person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

(b) By attending a meeting, a Member:

(i) Waives objection to lack of notice or defective notice of such meeting unless the Member, at the beginning of the meeting, objects to the holding of the meeting or the transacting of business at the meeting; and

(ii) Waives objection to consideration at such meeting of a particular matter not within the purpose or purposes described in the meeting notice unless the Member objects to considering the matter when it is presented.

6.9 Voting. Except as otherwise required by non-waivable provisions of the Act or as otherwise expressly provided herein: (a) each Series A Preferred Unit will be entitled to one vote in respect of any and all matters submitted to a vote of the holders of Series A Preferred Units, (b) each Series B Preferred Unit will be entitled to one vote in respect of any and all matters submitted to a vote of the holders of Series B Preferred Units, (c) each Preferred Unit shall represent a number of votes equal to the number of Common Units issuable upon

conversion of such Preferred Unit in respect of any matter submitted to a vote of the holders of Preferred Units, voting together as a single class, (d) each Preferred Unit shall represent a number of votes equal to the number of Common Units issuable upon conversion of such Preferred Unit in respect of any matter submitted to a vote of the holders of Preferred Units and Common Units, voting together as a single class, (e) each Common Unit will be entitled to one vote in respect of any and all matters submitted to a vote of the holders of Common Units, and (f) the holders of Preferred Units shall be entitled vote together with the holders of Common Units in respect of any matter submitted to a vote of the holders of Common Units, in which case each Preferred Unit shall represent a number of votes equal to the number of Common Units issuable upon conversion of such Preferred Unit.

6.10 Quorum; Vote Required. The presence at a meeting, in person or by proxy, of Members owning Units representing at least a majority of votes entitled to be cast in respect of the outstanding Units entitled to vote on the subject matter of the meeting at the time of the action taken constitutes a quorum for the transaction of business required. When a quorum is present, except as otherwise expressly provided herein, the affirmative vote, in person or by proxy, of Members owning Units representing at least a majority of the votes entitled to be cast in respect of the outstanding Units entitled to vote on the subject matter shall be the act of the Members, unless the vote of a greater proportion or number or voting by classes is required by the Act or by this Agreement. If a quorum is not represented at any meeting of the Members, such meeting may be adjourned to a period not to exceed sixty (60) days at any one adjournment.

6.11 Action by Written Consent of Members. Any action required or permitted to be taken at any meeting of the Members may be taken without a meeting if Members holding not less than the minimum number of Units that would be necessary to approve the action pursuant to a vote held in accordance with the terms of this Agreement, consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of the Members. In no instance where action is authorized by written consent shall a meeting of Members be required to be called or notice required to be given; however, a copy of the action taken by written consent shall be filed with the records of the Company. Reasonably prompt notice of the taking of any action taken without a meeting by less than unanimous written consent shall be given to those Members who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of Members to take the action were obtained; provided, that the effectiveness of such action is not dependent on the giving of such notice. Written consent by the Members pursuant to this Section 6.11 shall have the same force and effect as a vote of such Members taken at a duly held meeting of the Members and may be stated as such in any document.

6.12 Voting by Ballot. Voting on any question or in any election may be by voice vote unless the presiding Officer shall order or any Member shall demand that voting be by ballot.

6.13 No Cumulative Voting. No Member shall be entitled to cumulative voting in any circumstance.

SECTION 7. BOARD AND OFFICERS

7.1 Management and Control of the Company. The Company shall be managed exclusively by a board of "managers" (as such term is used in the Act) (the "Board") according to the remaining provisions of this Section 7, with the "managers" referred to as "Managers" throughout this Agreement. Except as otherwise expressly provided in this Agreement, (i) the management, operation and control of the business and affairs of the Company shall be vested exclusively in the Board, except as otherwise expressly provided for in this Agreement, and (ii) the Board shall have full and complete power, authority and discretion for, on behalf of and in the name of the Company, to enter into and perform all contracts and other undertakings that it may deem necessary or advisable to carry out any and all of the objects and purposes of the Company. The power and authority of the Board may be delegated by the Board to a committee of Managers, to any Officer or to any other Person engaged to act on behalf of the Company. No individual Manager has the authority or power to act for or on behalf of the Company or to make any expenditures or incur obligations on behalf of the Company other than as expressly authorized by the Board.

7.2 Members Shall Not Manage or Control. The Members, other than as they may act by and through the Board, shall take no part in the management of the business and affairs of the Company and shall transact no business for the Company, in each case other than as specifically delegated by the Board.

7.3 Initial Board Composition. The Board shall initially consist of five (5) individuals (each in such capacity, a "Manager", and together, the "Managers"), which are initially designated as set forth in the Plan. Subject to the terms and conditions herein, the number of Managers may be increased or decreased by the approval of the Board and such approval shall include (i) at least one Tier 1 Manager for so long as the Tier 1 Holder Group has the right to designate and appoint at least one Manager pursuant to Section 7.4(a)(ii), and (ii) the Tier 2 Manager for so long as the Tier 2 Holder Group has the right to designate and appoint a Manager pursuant to Section 7.4(a)(iii); provided, however, that the Board may not reduce the number of Managers to a number less than the number of Managers then serving. As of the Effective Date: the Initial CEO, who shall be a Manager, shall be [_____]; the Tier 1 Managers shall be [____] and [____]; the Tier 2 Manager shall be [____]; and the Other Manager shall be [____].

7.4 Election of Managers.

(a) Subject to Section 4.6(d)(ii), from and after the Effective Date, the members of the Board shall be designated and appointed as follows:

(i) for so long as the Chief Executive Officer of the Company is in office, he or she shall be a Manager; provided, however, that, in the event and at any time that such individual is no longer the Chief Executive Officer of the Company, he or she shall automatically immediately be deemed to no longer be a Manager without any action of the Board or the Members;

(ii) for so long as the Tier 1 Holder Group owns (A) at least 20% of the Units outstanding on a Fully Diluted Basis held by all Company Security Holders, the Tier 1 Holder Group shall have the right to designate and appoint two (2) Managers; or (B) at least 11% (but less than 20%) of the Units outstanding on a Fully Diluted Basis held by all Company Security Holders, the Tier 1 Holder Group shall have the right to designate and appoint one (1) Manager (each Manager so appointed, a "Tier 1 Manager");

(iii) for so long as the Tier 2 Holder Group owns at least 11% of the Units outstanding on a Fully Diluted Basis held by all Company Security Holders, the Tier 2 Holder Group shall have the right to designate and appoint one (1) Manager (each Manager so appointed, a "Tier 2 Manager"); and

(iv) each remaining Manager (each, an "Other Manager" and, collectively, the "Other Managers") (including, for the avoidance of doubt, the initial Other Manager who occupies this position on the Board) shall be an individual with relevant experience in the oil and gas industry who is elected by a majority of the votes entitled to be cast in respect of the Units (on a Fully Diluted Basis) present in person or represented by proxy at a meeting of Members held in accordance with this Agreement.

(b) Upon the affirmative vote of a majority of the Managers then in office, the Board may designate or elect a member of the Board to serve as Chairman (the "Chairman"). As of the Effective Date, the Chairman shall be [_____][4].

(c) Any Manager may resign at any time by so notifying the Chairman in writing. Such resignation shall take effect upon receipt of such notice by the Chairman or at such later time as is therein specified, and unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

(d) Each Person with the right to designate or participate in the designation of a Manager as specified above hereby represents and warrants to the Company that, to such Person's knowledge, none of the "bad actor" disqualifying events described in Rule 506(d)(1)(i)-(viii) under the Securities Act (each, a "Disqualification Event") is applicable to such Person's initial designee named above except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) under the Securities Act is applicable. Any individual designated or appointed or nominated or elected to be a Manager in respect of which any Disqualification Event is applicable, except for a Disqualification Event to which such Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable, is hereinafter referred to as a "Disqualified Designee". Each Person with the right to designate or nominate or participate in the designation or nomination of a Manager as specified above hereby covenants and agrees (A) not to designate or nominate or participate in the designation or nomination of any such individual who, to such Person's knowledge, is a Disqualified Designee and (B) that in the event such Person becomes aware that any individual previously designated or nominated by any such Person is or has become a Disqualified Designee, such Person shall as promptly as practicable take such actions as are necessary to

[4] **Note to Draft**: To be determined.

remove such Disqualified Designee from the Board and designate or nominate a replacement designee who is not a Disqualified Designee.

7.5 Removal; Vacancies.

(a) (i) The Tier 1 Holder Group, in the case of Section 7.4(a)(ii), (ii) the Tier 2 Holder Group, in the case of Section 7.4(a)(iii), and (iii) Company Security Holders that collectively own Company Securities that represent at least a majority of the votes entitled to be cast, in the case of Section 7.4(a)(iv), shall at any time, and from time to time, have the exclusive right to remove any Manager designated and appointed, or nominated and elected, to the Board pursuant to such Section in accordance with this Section 7 by delivering a written notice thereof to the Company, and, if such Person determines to exercise such right to remove such Manager, such Manager shall immediately be deemed to be removed as a Manager on the Board and the parties hereto shall take all actions necessary to promptly cause the election of a replacement Manager to the Board designated and appointed, or elected, pursuant to Section 7.4 above by the Person(s) who exercised the right to remove such Manager as soon as possible after the date of the removal of such Manager; provided, however, that with respect to any Other Manager that is an employee of the Company or any Subsidiary thereof (an "Employee Manager"), such right to remove such Employee Manager (A) shall be subject to the approval of the Board (excluding for all purposes of determining such approval (including quorum), such Other Manager) and (B) may be exercised by the Board without the consent of any Member (excluding for all purposes of determining the approval of such exercise (including quorum), such Other Manager). If the Tier 1 Holder Group ceases to have the right to designate and appoint and has designated and appointed in accordance with Section 7.4(a)(ii) two (2) Managers, but retains the right to designate and appoint one (1) Manager, then the Tier 1 Holder Group will designate one (1) of the then serving Tier 1 Managers to be deemed to no longer be a Tier 1 Manager and such designated Manager shall no longer be a Tier 1 Manager and shall thereafter be subject to Section 7.4(a)(iv) and such Manager's removal shall thereafter be subject to this Section 7.5(a). In the event that the Tier 1 Holder Group ceases to have the (and no longer has any) right to designate and appoint and has designated and appointed any Manager in accordance with Section 7.4(a)(ii), then the then serving Tier 1 Manager shall no longer be a Tier 1 Manager and shall thereafter be subject to Section 7.4(a)(iv) and such Manager's removal shall thereafter be subject to this Section 7.5(a). In the event that a Tier 2 Holder Group ceases to have the (and no longer has any) right to designate and appoint and has designated and appointed any Manager in accordance with Section 7.4(a)(iii), then the then serving Tier 2 Manager shall no longer be a Tier 2 Manager and shall thereafter be subject to Section 7.4(a)(iv) and such Manager's removal shall thereafter be subject to this Section 7.5(a). In the event that any Employee Manager ceases to be an employee of the Company and its Subsidiaries, such Employee Manager shall immediately cease to be a Manager unless otherwise determined by the Board in connection with the separation of such Manager as an employee (excluding for all purposes of determining the approval of such determination (including quorum), such Other Manager).

(b) In the event that any Tier 1 Manager or any Tier 2 Manager shall cease to serve in such capacity, the vacancy resulting thereby shall be filled by an individual designated and appointed by the Tier 1 Holder Group and the Tier 2 Holder Group, respectively. In the event that any Other Manager shall cease to serve in such capacity, the vacancy resulting thereby may be filled by an individual designated and appointed by the Board until such vacancy is filled

by the Members in accordance with Section 7.6. The Board shall call a special meeting of the Members for the purpose of filling such vacancy within one hundred eighty (180) days of the date on which such Other Manager ceases to serve in such capacity.

7.6 Member Nominations. Nominations of individuals for election to the Board as Other Managers in accordance with Section 7.4(a)(iv) may be made at a special meeting of Company Security Holders called for the purpose of electing such Managers, if one of the purposes for which such special meeting was called was the election of such Managers, by (x) the Board or (y) by a Nominating Member(s), present in person or represented by Proxy, and entitled to vote on the election of such Managers, if such Nominating Member complies with the notice procedures and requirements set forth below in this Section 7.6.

(a) A Nominating Member shall provide notice to the Secretary of the Company in written form at the principal executive offices of the Company not later than the close of business on the fifteenth (15th) day following the day on which the first notice of the date of such special meeting of Company Security Holders was made to Company Security Holders by the Company. In no event shall any adjournment or postponement of a meeting of Company Security Holders or the announcement thereof commence a new time period for the giving of a Nominating Member's notice as described above.

(b) A Nominating Member's notice to the Secretary of the Company must set forth as to each individual whom the Nominating Member proposes to nominate for election as a Manager: (A) the name, age, business address, and residential address of the individual; (B) the principal occupation, business, or employment of the individual for the most recent five years, and the name and principal business of any company in which any such employment is carried on; (C) the number of each class or series of outstanding Units owned, or controlled or directed, directly or indirectly, by the Nominating Member as of the record date for the meeting of Company Security Holders (if such date shall then have been made available and shall have occurred) and as of the date of such notice; and (D) the representations contemplated by Section 7.4(d). The Company may require any proposed nominee to furnish such other information as may reasonably be required by the Company to determine the eligibility of such proposed nominee to serve as an Other Manager of the Company.

(c) Notwithstanding the foregoing, the Board may, in its sole discretion, waive any requirement in this Section 7.6.

7.7 Meetings of the Board. The Board shall hold regular meetings [at least once during each fiscal quarter] at such times and places as shall be determined by the Board. Special meetings of the Board may be called at any time by any two or more Managers. Written notice shall be required with respect to any meeting of the Board, and written notice of any special meetings shall specify the purpose of the special meeting. Unless waived by all of the Managers in writing (before, during or after a meeting) or with respect to any Manager at such meeting, prior notice of any regular or special meeting (including reconvening a meeting following any adjournments or postponements thereof) shall be given to each Manager at least one (1) Business Day before the date of such meeting. Notice of any meeting need not be given to any Manager who shall submit, either before, during or after such meeting, a signed waiver of notice. Attendance of a Manager at a meeting shall

constitute a waiver of notice of such meeting, except when the Manager attends the meeting for the express purpose of objecting at the beginning thereof to the transaction of any business because the meeting was not properly noticed, called or convened.

7.8 Quorum and Voting.

(a) No action may be taken at a meeting of the Board by the Board unless a quorum is present. A quorum shall consist of the presence, in person or by proxy, of a majority of the Managers then in office.

(b) At such meeting, the Board shall act by vote of a majority of the Managers then in office, and each Manager shall have one vote.

(c) Any action required or permitted to be taken by the Board (or any committee thereof) may be taken without a meeting, if a majority of the Managers then in office consent in writing to such action. Such consent shall have the same effect as a vote of the Board.

(d) No Manager shall be disqualified from acting on any matter because such Manager is interested in the matter to be acted upon by the Board so long as all material aspects of such matter have been disclosed in reasonable detail to all Managers who are to act on such matter. With respect to any action to be taken by the Board or meeting of the Board, each Manager may authorize in writing any other Manager to vote and act for such Manager by proxy, and such Manager shall be counted towards the determination of whether a quorum of the Board is present. One Manager may hold more than one proxy and each such proxy held by such Manager shall be counted towards the determination of whether a quorum of the Board exists.

7.9 Procedural Matters of the Board.

(a) The Board (and each committee thereof) shall cause to be kept a book of minutes of all of its actions by written consent and in which there shall be recorded with respect to each meeting of the Board (or any committee thereof) the time and place of such meeting, whether regular or special (and if special, how called), the names of those present and the proceedings thereof.

(b) Managers may participate in a meeting of the Board (or any committee thereof) by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear one another, and such participation shall constitute presence in person at such meeting.

(c) At each meeting of the Board, the Chairman shall preside and, in his or her absence, Managers holding at least a majority of the votes present may appoint any member of the Board to preside at such meeting. The secretary (or such other person as shall be designated by the Board) shall act as secretary at each meeting of the Board. In case the secretary shall be absent from any meeting of the Board, an assistant secretary shall perform the duties of secretary at such meeting or the person presiding at the meeting may appoint any person to act as secretary of the meeting.

(d) The Board may designate one or more committees to take any action that may be taken hereunder by the Board, which committees shall take actions under such procedures (not inconsistent with this Agreement) as shall be designated by it.

7.10 Term. Each Manager shall hold office until such Manager's successor is elected and qualified or until such Manager's earlier resignation or removal in accordance with the terms of this Section 7.

7.11 Compensation. The Board in its discretion may determine the compensation, if any, of Managers for service as a Manager with the approval of a majority of the Board.

7.12 Expenses. The Company shall pay the reasonable out-of-pocket expenses (including travel and lodging) incurred by each Manager and Board Observer in connection with (i) attending meetings of the Board and the committees thereof and (ii) attending any other meetings or performing any other activities at the request of the Board. Expenses shall be reimbursed reasonably promptly after presentment of reasonable documentation to the Secretary of the Company.

7.13 Obligation to Support Purposes of this Agreement. Without limiting Section 7.4, each Company Security Holder shall vote (or, if applicable, consent in writing with respect to) all of its voting Company Securities (to the extent entitled to vote or consent with respect to the relevant matter), and each Company Security Holder and the Company shall take all necessary and desirable actions within its control as may be reasonably requested in order to effect the provisions of this Agreement, including the provisions relating to the nomination, designation, election, removal, or replacement of Managers. The parties hereto understand and agree that monetary damages would not adequately compensate an injured party for the breach of this Section 7 by any party, that this Section 7 shall be specifically enforceable, and that any breach or threatened breach of this Section 7 shall be the proper subject of a temporary or permanent injunction or restraining order. Further, each party hereto waives any claim or defense that there is an adequate remedy at law for such breach or threatened breach.

7.14 Officers.

(a) Designation; Authority. The Company shall have such individuals as officers ("Officers") as may be determined by the Board. The Officers of the Company shall consist initially of the Chairman of the Board, a Chief Executive Officer, a Secretary, or such other Officers as may be appointed by the Board. One person may hold, and perform the duties of, any two or more of such offices. No Officer need be a Member or a Manager. The Board may delegate to the Officers such of the powers as are granted to the Board hereunder, including the power to execute documents on behalf of the Company, as the Board may in its sole discretion determine; provided, however, that no such delegation by the Board shall cause the Board to cease to be the "manager" of the Company within the meaning of the Act; provided, further, that no Officer shall cause the Company to cast a vote as a shareholder, member or in a similar capacity with respect to any Person, including a Subsidiary, without the approval of the Board. Unless the authority of the agent designated as the Officer in question is limited in this Agreement, in the document appointing such Officer or is otherwise specified by the Board, any Officer so appointed shall have the same authority to act for the Company as a corresponding

officer of a Delaware corporation would have to act for a Delaware corporation. The Board, in its sole discretion, may by vote or resolution ratify any act previously taken by an Officer or agent acting on behalf of the Company. In accordance with the foregoing, the persons who shall, as of the Effective Date, serve as Officers are identified on Schedule C attached hereto.

(b) Terms of Office; Resignation; Removal.

(i) Each Officer shall hold office until he or she is removed in accordance with clause (iii) below or his or her earlier death, disability or resignation. Any vacancy occurring in any of the Officers, for any reason, shall be filled by action of the Board.

(ii) Any Officer may resign at any time by giving written notice to the Board. Such resignation shall take effect at the time specified in such notice or, if the time be not specified, upon receipt thereof by the Board. Unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

(iii) Each Officer shall be subject to removal by the Board.

(c) Compensation of Officer. The compensation and terms of employment of all of the Officers shall be determined by the Board.

7.15 Board Observers. For so long as a Company Security Holder, together with its Affiliates, owns at least 11% of the Units outstanding on a Fully Diluted Basis, such Company Security Holder shall have the right to appoint and designate a representative (a "Board Observer") to attend all meetings of the Board (including executive sessions) and any committees thereof in a nonvoting capacity, and in connection therewith, the Company shall give such Board Observer copies of all notices, minutes, consents and other materials (financial or otherwise) that the Company provides to the Managers; provided, however, that the Board Observer shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; and provided further, that the Board reserves the right to withhold any information and to exclude such Board Observer from any meeting or portion thereof if the Board determines in good faith that such exclusion is reasonably necessary to preserve attorney-client privilege between the Company and its counsel. The decision of the Board with respect to the privileged or confidential nature of such information shall be final and binding.

SECTION 8. ACCOUNTING; INFORMATION RIGHTS

8.1 Information Rights. Subject to Section 8.2, until such time (if any) as the Company becomes a reporting company under the Exchange Act, the Company shall make available (via a password-protected "data site") the following financial reports to each Member:

(a) Annual Reports. Not more than 90 days following the last day of each fiscal year of the Company, the Company's unaudited or, if available, audited consolidated balance sheet and related statements of income, Members' equity, and cash flows showing the financial condition of the Company and its consolidated Subsidiaries as of the close of such Fiscal Year and the results of its operations and the operations of such Subsidiaries during such

Fiscal Year, which financial statements (A) if unaudited, shall be certified by a Financial Officer as fairly presenting in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP, and (B) if audited, shall be audited by independent public accountants or auditors of recognized national standing and accompanied by an opinion of such accountants; and

(b) Quarterly Reports. Not more than 45 days after each fiscal quarter of the Company, the Company's consolidated balance sheet and related statements of income, Members' equity, and cash flows showing the financial condition of the Company and its consolidated Subsidiaries as of the close of such fiscal quarter and the results of its operations and the operations of such Subsidiaries during such fiscal quarter and the then elapsed portion of the Fiscal Year, all certified by a Financial Officer as fairly presenting in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes.

8.2 Certification of Accredited Investor Status. Until such time as the Company becomes a reporting company under the Exchange Act, the Company may request any Company Security Holder to provide the Company with a certificate, within 30 days of such request, certifying whether such Company Security Holder is an "accredited investor" as such term is defined under Regulation D of the Securities Act.

8.3 Books and Records. At all times during the existence of the Company, the Company shall maintain, at its principal place of business, separate books of account for the Company.

SECTION 9. TAX MATTERS

9.1 Tax Returns. The Company shall prepare, or cause to be prepared, and timely file all U.S. federal, state, local and foreign tax and information returns required to be filed by the Company. Each Member shall furnish to the Company all pertinent information in its possession relating to the Company's operations that is reasonably necessary to enable the Company's tax returns to be timely prepared and filed. The Company shall bear the costs of the preparation and filing of such Company tax returns and forms.

9.2 Partnership Representative.

(a) Such Member that may be designated in writing by the Board shall be designated, and shall be specifically authorized to act as, the "partnership representative" (the "Partnership Representative") under Code Section 6223 (or any successor thereto), as amended by the Bipartisan Budget Act and, if required by the Bipartisan Budget Act, the Board shall also appoint a Designated Individual. Both the Partnership Representative and the Designated Individual are subject to replacement from time to time by the Board. The Partnership Representative shall apply the provisions of subchapter C of Chapter 63 of the Code, as amended by the Bipartisan Budget Act (or any successor rules thereto) or similar provisions of state, local or non-U.S. tax law, with respect to any audit, imputed underpayment, other adjustment, or any such decision or action by the Internal Revenue Service with respect to the Company or the

Members for such taxable years, in the manner reasonably determined by the Partnership Representative. Each Member does hereby agree to indemnify and hold harmless the Company from and against any liability with respect to its share of any tax deficiency paid or payable by the Company that is allocable to the Member (as determined by the Board) with respect to an audited or reviewed taxable year for which such Member was a Member (including any applicable interest and penalties); such obligation shall survive such Member's ceasing to be a Member of the Company and/or the termination, dissolution, liquidation and winding up of the Company. The Partnership Representative shall not make any election under this Section 9.2, unless required by Law, without the Board's approval.

(b) Each Member shall provide such cooperation and assistance, including but not limited to executing and filing forms or other statements and providing information about the Member, as is reasonably requested by the Partnership Representative, to enable the Company to satisfy any applicable tax reporting or compliance requirements, to make any tax election or to qualify for an exception from or reduced rate of tax or other tax benefit or be relieved of liability for any tax regardless of whether such requirement, tax benefit or tax liability existed on the date such Member was admitted to the Company. If a Member fails to provide any such forms, statements, or other information requested by the Partnership Representative such Member will be required to indemnify the Company for the share of any tax deficiency paid or payable by the Company that is due to such failure (as reasonably determined by the Board). The obligations set forth in this Section 9.2(b) shall survive such Member's ceasing to be a Member in the Company and/or the termination, dissolution, liquidation and winding up of the Company.

(c) The reasonable, documented out-of-pocket expenses incurred by the Partnership Representative or a Designated Individual or a Person serving in a similar capacity as such shall be borne by the Company.

SECTION 10. EXCULPATION; INDEMNIFICATION; LIABILITY; OPPORTUNITY

10.1 Exculpation.

(a) No Manager, Officer or Member, in any way, guarantees the return of any Members' capital contributions or a profit for the Members from the operations of the Company. To the fullest extent permitted by Section 18-1101 of the Act, no Protected Person will be liable to the Company or any Member (in its capacity as such) for any loss or damage sustained by the Company or any Member (in its capacity as such) except as specifically provided to the contrary in the immediately following sentence. To the maximum extent permitted by law, none of the Protected Persons shall be liable to the Company or its Members for any loss or damage resulting from any act or omission taken or suffered by such Protected Person in connection with the conduct of the affairs of the Company or any of its Subsidiaries or otherwise in connection with this Agreement or the matters contemplated hereby, unless such loss or damage is incurred by reason of such Protected Person's acts or omissions that constitute a bad faith violation of the implied contractual covenant of good faith and fair dealing or (i) with respect to any Member, breach by such Member of this Agreement, (ii) with respect to any Officer (in its capacity as such), any matter for which the personal liability of an officer of a Delaware corporation is not permitted to be eliminated under

the Delaware General Corporation Law as of the date hereof or (iii) with respect to any director, manager or officer (in each case, in its capacity as such) of any direct or indirect Subsidiary of the Company, any matter for which it is prohibited under applicable law or under the organizational documents of such Subsidiary to eliminate the personal liability of a director, manager or officer, as the case may be as of the date hereof. Any Protected Person or Officer may consult with legal counsel, accountants, advisors or other similar persons with respect to the Company's or any of its Subsidiaries' affairs and shall be fully protected and justified in any action or inaction that is taken or omitted in good faith, in reliance upon and in accord with the opinion or advice of such persons, provided they shall have been selected in good faith. The preceding sentence shall in no way limit any Person's right to rely on information to the extent provided in Section 18-406 of the Act.

(b) None of the Members, by reason of their execution of, or being subject to, this Agreement or their status as members of the Company shall be responsible or liable for any Indebtedness, liability or obligation of any other Member incurred either before or after the execution of this Agreement.

10.2 Indemnification.

(a) To the fullest extent permitted under the Act and applicable law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights that said law permitted the Company to provide prior to such amendment) the Company shall indemnify and hold harmless each of the Protected Persons (each, an "Indemnitee") from and against any and all claims, liabilities, damages, losses, costs and expenses (including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and reasonable expenses of investigating or defending against any claim or alleged claim) of any nature whatsoever, known or unknown, liquidated or unliquidated (collectively, "Damages"), that are incurred by such Indemnitee by reason of any act performed or omitted to be performed by the Indemnitee in connection with the business of the Company or any of its Subsidiaries or, in the case of third-party claims, by reason of direct or indirect ownership of the Company, and from liabilities or obligations of the Company imposed on such Person by virtue of such Person's position with the Company (including, in each case, for any act performed or omitted to be performed by the Indemnitee prior to the formation of the Company that relate to the Company or any predecessor of the Company or any of their subsidiaries), except (i) to the extent that there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that the action or inaction of such Indemnitee constituted fraud or willful misconduct, (ii) with respect to any Member, breach of any non-waivable duty of good faith or fair dealing or breach by such Member of this Agreement, (iii) with respect to any Manager, breach of any non-waivable duty of good faith or fair dealing, (iv) with respect to any Officer (in its capacity as such), any matter for which a Delaware corporation does not have the power to indemnify a director, officer, employee or agent of such corporation pursuant to Section 145 of the Delaware General Corporation Law as of the date hereof or (v) with respect to any director, manager or officer (in each case, in its capacity as such) of any direct or indirect Subsidiary of the Company, (x) any matter for which such Subsidiary is prohibited to indemnify pursuant to applicable law as of the date hereof or (y) any matter in respect of which such director, manager or officer has not acted in good faith or in a manner that

he or she believed to be in the best interest of such Subsidiary and/or the Company and with respect to any criminal proceeding, had reasonable cause to believe his or her conduct was unlawful. The indemnification obligations of the Company pursuant to this Section 10.2 shall be satisfied from and limited to the Company's assets and no Member shall have any personal liability on account thereof.

(b) The Company shall pay reasonable, documented expenses incurred by any Indemnitee in defending any action, suit or proceeding described in subsection (a) of this Section 10.2 in advance of the final disposition of such action, suit or proceeding, as such Damages are incurred; provided, however, that any such advance shall only be made if such Indemnitee provides written affirmation to repay such advance if it shall ultimately be determined by a court of competent jurisdiction that such Indemnitee is not entitled to be indemnified by the Company pursuant to this Section 10.2.

(c) Certain Indemnitees that are directors, officers, employees, securityholders, partners, limited partners, members, equityholders, Managers, or advisors of any Member or any of such Member's Affiliates (each such Person, a "Fund Indemnitee") may have certain rights to indemnification, advancement of expenses and/or insurance provided by or on behalf of such Member and/or its Affiliates (collectively, the "Fund Indemnitors"). Notwithstanding anything to the contrary in this Agreement or otherwise: (i) the Company is the indemnitor of first resort (*i.e.*, the Company's obligations to each Fund Indemnitee are primary and any obligation of the Fund Indemnitors to advance Damages or to provide indemnification for such Damages incurred by each Fund Indemnitee are secondary), (ii) the Company shall be required to advance the full amount of Damages incurred by each Fund Indemnitee and will be liable for the full amount of all such Damages paid in settlement to the extent legally permitted and as required by this Agreement, without regard to any rights each Fund Indemnitee may have against the Fund Indemnitors, and (iii) the Company irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. Notwithstanding anything to the contrary in this Agreement or otherwise, no advancement or payment by the Fund Indemnitors on behalf of a Fund Indemnitee with respect to any claim for which such Fund Indemnitee has sought indemnification or advancement of Damages from the Company shall affect the foregoing and the Fund Indemnitors will have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Fund Indemnitee against the Company. The Fund Indemnitors are express third party beneficiaries of the terms of this Section 10.2(c).

(d) Without limiting clause (c) above, the indemnification provided by this Section 10.2 shall not be deemed exclusive of any other rights to indemnification to which those seeking indemnification may be entitled under any agreement, determination of the Board or otherwise. The rights to indemnification and reimbursement or advancement of expenses provided by, or granted pursuant to, this Section 10.2 shall continue as to an Indemnitee who has ceased to be a Member, Manager or Officer (or other Person indemnified hereunder) and shall inure to the benefit of the successors, executors, administrators, legatees and distributees of such Person.

(e) The provisions of this Section 10.2 shall be a contract between the Company, on the one hand, and each Indemnitee who served at any time while this Section 10.2 is in effect in any capacity entitling such Indemnitee to indemnification hereunder, on the other hand, pursuant to which the Company and each such Indemnitee intend to be legally bound. No repeal or modification of this Section 10.2 shall affect any rights or obligations with respect to any state of facts then or theretofore existing or thereafter arising or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon such state of facts.

(f) The Company may enter into indemnity contracts with Indemnitees and adopt written procedures pursuant to which arrangements are made for the advancement of expenses and the funding of obligations under this Section 10.2 hereof and containing such other procedures regarding indemnification as are appropriate. For the avoidance of doubt, each of the Managers, in his or her capacity as Manager, shall be entitled to receive indemnity contracts with the Company on terms no less favorable than any other indemnity contract entered into between the Company (or any of its Subsidiaries) and any other Manager, in his or her capacity as Manager.

10.3 Liability; Duties.

(a) No Member, Manager or Officer shall be personally liable for any Indebtedness, liability or obligation of the Company, except as specifically provided for in this Agreement or required pursuant to the Act or any other applicable law. To the fullest extent permitted by the Act, any fiduciary or other duties imposed under Delaware law (including the duty of loyalty and duty of care) on the Board or Managers (or any Manager) in their capacities as such are hereby eliminated and waived.

(b) To the fullest extent permitted by law (including but not limited to Section 18-1101 of the Act), and notwithstanding anything else to the contrary contained herein, or any agreement contemplated herein or applicable provisions of law or equity or otherwise, any duties (including fiduciary duties) of a Member or group of Members or controlling Member or group of Members (but not the duties of Officers in their capacity as such) that would otherwise apply at law or in equity (including the duty of loyalty and the duty of care) are hereby waived and eliminated to the fullest extent permitted under Delaware law and any other applicable law; provided that (i) the foregoing shall not eliminate the obligation of each Manager and Member to act in compliance with the express terms of this Agreement and (ii) the foregoing shall not be deemed to eliminate the implied contractual covenant of good faith and fair dealing. In furtherance of the foregoing (but subject to the provisos in the foregoing), when any Manager or Member (but not the Officers, in their capacity as such) takes any action under this Agreement to give or withhold its consent or approval, such Manager or Member shall have no duty (fiduciary or other) to consider the interests of the Company, its Subsidiaries or the other Managers or Members, and may act exclusively in its own interest.

(c) The Officers, in their capacity as such, shall owe the same duties (including fiduciary duties) to the Company and the Members as the duties that officers of a Delaware corporation owe to such corporation and its stockholders.

(d) The Members acknowledge and agree that the foregoing is intended to comply with the provisions of the Act (including Section 18-1101 of the Act) permitting members and Managers of a limited liability company to eliminate fiduciary duties to the fullest extent permitted under the Act.

10.4 Insurance. The Company shall purchase and maintain insurance, on behalf of the Indemnitees, and may purchase and maintain insurance on behalf of the Company, against any liability that may be asserted against or expenses that may be incurred by any such Person in connection with the activities of the Company or any of its Subsidiaries or such Indemnitees, and in such amounts, as the Board reasonably determines are customary for similarly-situated businesses such as the Company and its Subsidiaries, regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement.

10.5 Limited Liability Company Opportunity.

(a) The Company and each Member acknowledges and affirms that the other Members (other than Officers, officers of any of the Company's Subsidiaries and employees of the Company or any of the Company's Subsidiaries) may have, and may continue to participate in, directly or indirectly, investments in assets and businesses which are, or will be, suitable for the Company or competitive with the Company's business ("Member Investments").

(b) The Company and each Member, individually and on behalf of the Company, expressly waives any conflicts of interest or potential conflicts of interest that exist or arise as a result of any such Member Investments and agrees that no Member, Manager nor any of their respective representatives (other than, in each case, Officers, officers of any of the Company's Subsidiaries and employees of the Company or any of the Company's Subsidiaries) shall have liability to any Member or any Affiliate thereof, or the Company with respect to such conflicts of interest or potential conflicts of interest in respect of such Member Investments.

(c) Subject to clause (d) below, the Company and each past, present and future Member (other than Officers, officers of any of the Company's Subsidiaries and employees of the Company or any of the Company's Subsidiaries) and each of their respective Affiliates, officers, directors, trustees, employees, partners, managers, members, stockholders, beneficiaries and agents (the foregoing Persons in this clause (c), including (for the avoidance of doubt) any such Persons that may be Managers, the "Exempted Persons"), has the right to, and shall have no duty (contractual, fiduciary or otherwise) not to, directly or indirectly engage in any business, business activity or line of business, including those that are the same or similar to those of the Company or any of its Subsidiaries or may be deemed to be competing with the Company or any of its Subsidiaries.

(d) In the event that any Exempted Person acquires knowledge of a potential transaction or matter that may be a business opportunity for any of the Company or one or more of its subsidiaries, on the one hand, and such Exempted Person or any other Person, on the other hand, such Exempted Person shall have no duty (contractual, fiduciary or otherwise) to communicate or present such business opportunity to the Company or any of its subsidiaries or

Affiliates, as the case may be, and notwithstanding anything herein to the contrary, shall not be liable to the Company or any of its Affiliates, Members or creditors for breach of any duty (contractual, fiduciary or otherwise) by reason of the fact that such Exempted Person, directly or indirectly, pursues or acquires such opportunity for itself, directs such opportunity to another Person, or does not present such opportunity to the Company or any of its subsidiaries; provided, however, that this clause (d) shall not apply to any business opportunities which come to an Exempted Person's attention solely as a result of such Exempted Person's (or their officers', directors', trustees', employees', partners', managers', members', stockholders', beneficiaries', affiliates' and agents') rights under this Agreement or position as a Manager, officer, employee, director or trustee of the Company or any of its subsidiaries.

SECTION 11. ADDITIONAL COMPANY SECURITY HOLDERS

11.1 Additional Company Security Holders. The parties hereto acknowledge that certain Persons, including, without limitation, Transferees, Managers, employees and consultants of the Company and its Affiliates, may become Company Security Holders after the Effective Date (the "Additional Company Security Holders"). Unless otherwise determined by the Board, as a condition to the Transfer or issuance of Company Securities to each such Additional Company Security Holder, the Company shall require each such Additional Company Security Holder to execute and deliver an agreement in writing to be bound by the terms and conditions of this Agreement and, if such Additional Company Security Holder is a Transferee, assume the rights and obligations of its transferor (or if such transferor is not a party or subject hereto, the rights and obligations that such transferor would have hereunder as a party hereto as of the Effective Date) pursuant to a joinder agreement substantially in the form attached as Exhibit A hereto (a "Joinder Agreement") and may require an opinion of counsel (to be provided at the Additional Company Security Holder's sole cost and expense) to establish that registration of the proposed Transfer is not required under the Securities Act or any applicable state securities laws or "blue sky" laws. Notwithstanding the foregoing, with no further action or consent required, including, but not limited to, failure to execute and deliver a Joinder Agreement, any Person that is required to or becomes a Company Security Holder on or after the Effective Date shall be bound by the terms of this Agreement and shall be deemed to be a Company Security Holder with respect to such Company Securities pursuant to the terms of this Agreement, and any Company Securities Transferred to any such Additional Company Security Holder shall become or remain subject to the terms of this Agreement.

SECTION 12. TRANSFERS BY COMPANY SECURITY HOLDERS

12.1 Transfers; Generally. Except as otherwise expressly provided herein (including Section 13), any and all Transfers of Company Securities shall be made solely in accordance with the provisions of this Section 12, and, if subject to the provisions of Section 14 hereof, solely to the extent in compliance with Section 14, as the case may be.

12.2 Certain Limitations.

(a) General Prohibition. Notwithstanding anything herein to the contrary, no Company Security Holder may Transfer any Company Securities unless such Transfer is in compliance with applicable Federal and state securities laws and no Company Securities may be

Transferred (other than in connection with, but subject to the consummation of, a Public Offering) if such Transfer would (i) cause the Company to become subject to the reporting requirements of the Exchange Act or the U.S. Investment Company Act of 1940 or any other similar rule or regulation, (ii) be a "prohibited transaction" under ERISA or the Code or cause all or any portion of the assets of the Company to constitute "plan assets" under ERISA or §4975 of the Code, or (iii) cause the Company to become a "publicly-traded partnership," as such term is defined in §7704 of the Code.

(b) Limitations on Transfer to Competitors. Notwithstanding anything herein to the contrary, no Company Security Holder shall Transfer (other than pursuant to Section 13) any Company Securities to a Competitor or an Affiliate of a Competitor (other than an Excluded Affiliate) without the consent of the Board.

(c) Accredited Investors. Notwithstanding anything herein to the contrary, no Company Security Holder shall Transfer any Company Securities to any Person, unless such Person is either (i) already a Company Security Holder prior to such Transfer or (ii) an "accredited investor" as such term is defined under Regulation D of the Securities Act.

(d) Violation of Transfer Limitations. Any Transfer or attempted Transfer of Company Securities in violation of any provisions of this Agreement shall be void, and the Company shall not record such Transfer on its books or treat any purported Transferee of such Company Securities as the owner of such Company Securities for any purpose, including with respect to the payment of dividends or distributions with respect thereto. Furthermore, prior to recording such Transfer on its books or treating any purported Transferee of such Company Securities as the owner of such Company Securities for any purpose, the Company may require such purported Transferee to certify or make representations with respect to the matters set forth in this Section 12.

(e) Further Assurances. Each Member agrees, upon request of the Board, to execute such certificates or other documents and perform such acts as the Board reasonably deems appropriate to preserve the status of the Company as a limited liability company after the completion of any Transfer of Units of such Member under the laws of the jurisdiction in which the Company is conducting its operations.

(f) Distributions Subsequent to Transfer. A Transfer of a Member's Units as described in this Section 12 shall be effective on the date the requirements of this Section 12 are satisfied, or at such earlier time as the Board determines. Distributions with respect to such Transferred Units made after the effective date of such Transfer shall be made to the Transferee.

(g) Satisfactory Written Transfer Required. Notwithstanding anything to the contrary contained herein, both the Company and the Board shall be entitled to treat the Transferor of Units as the absolute owner thereof in all respects, and shall incur no liability for distributions made in good faith to it, until such time as a written notice of such Transfer indicating that such Transfer conforms to the requirements of this Section 12 has been received by, and such Transfer is recorded on the books of, the Company.

(h) Rights Upon Bankruptcy or Death of a Member. The Bankruptcy or death of a Member shall not cause a dissolution of the Company or the withdrawal of such Member, but the rights of such Member to receive distributions and to Transfer its Units pursuant to this Section 12 shall, on the happening of such an event, devolve on its successor, administrator or other legal representative for the purpose of settling its estate or administering its property, subject to the terms and conditions of this Agreement, and the Company shall continue as a limited liability company. The successor or estate of such Member shall be liable for all of the obligations of such bankrupt or deceased Member.

SECTION 13. DRAG-ALONG RIGHTS

13.1 Drag-Along Rights. Prior to a Qualified IPO and subject to Section 4.6(d)(ii), a majority of the Board (which majority must include, for so long as the Tier 1 Holder Group has the right to appoint and designate two (2) Managers pursuant to Section 7.4(a)(ii), at least one (1) Tier 1 Manager), together with the Company Security Holders that collectively own Preferred Units that represent at least a majority of the Common Units then issuable upon conversion of the Preferred Units (the "Dragging Members"), may cause the Company to enter into any of the transactions described in subsections (ii) through (iv) of the definition of "Deemed Liquidation Event" set forth in Section 1.1 with any Person or Persons that are not affiliated with any such Dragging Members or the Company (an "Approved Sale"), and shall have the right (the "Drag-Along Right"), by providing notice of such Approved Sale to the Company, to require the Company and each Company Security Holder to comply with this Section 13 with respect to such Approved Sale. Each Company Security Holder, together with the Company, is hereby obligated to consent to, and raise no objections against, such Approved Sale, and each Company Security Holder is hereby obligated to sell its Company Securities on the terms and subject to the conditions approved by such Dragging Members. In furtherance of the foregoing, each Company Security Holder acknowledges that no Member shall be entitled to dissenters' or appraisal rights under any circumstances and Section 18-210 of the Act shall not apply. The Company shall provide each such Company Security Holder with written notice of any Approved Sale at least fifteen (15) Business Days prior to the consummation thereof setting forth in reasonable detail the terms of such Approved Sale, including the class and number of shares of Company Securities to be sold (including the number of Unit Equivalents represented thereby), the identity of the prospective Transferee(s), its applicable Per Unit Drag Price and form of consideration to be paid in respect of the Company Securities to be Transferred by it in connection with such Approved Sale, and the date on which such Approved Sale is proposed to be consummated.

13.2 Exercise of Drag-Along Rights. Each Company Security Holder required to sell Company Securities pursuant to an Approved Sale (each, a "Drag-Along Seller") shall cooperate in consummating such Approved Sale, including by becoming a party to the sales, merger, or other agreement pursuant to which it is proposed such Approved Sale will be consummated and all other appropriate related agreements, delivering, at the consummation of such sale, unit certificates (if any) and other instruments for such securities duly endorsed for transfer, free and clear of all liens and encumbrances, and voting or consenting in favor of such transaction (to the extent a vote or consent is required) and taking any other necessary or appropriate action in furtherance thereof, including the execution and delivery of any other appropriate agreements, certificates, instruments, and other documents. In addition, each Drag-Along Seller shall, if and

to the extent requested by the Dragging Members, agree to be severally responsible for its proportionate share, based on the relative consideration payable to each Company Security Holder in such Approved Sale, of (i) the third-party expenses incurred on behalf and for the benefit of all Drag-Along Sellers in connection with such Approved Sale, to the extent not paid by the Company or any other Person, and (ii) the monetary obligations and liabilities applicable to all Drag-Along Sellers in connection with such Approved Sale. Such monetary obligations and liabilities (x) shall include (to the extent such obligations are incurred): monetary obligations and liabilities for indemnification (including for (A) breaches of representations and warranties made with respect to such Drag-Along Seller's ownership of Company Securities (but not, for the avoidance of doubt, breaches of representations and warranties made with respect to the Company, other than as contemplated by clause (y) below), (B) breaches by such Drag-Along Seller of covenants in effect prior to closing made by such Drag-Along Seller and relating to such Drag-Along Seller, and (C) other matters to be agreed, but only, in the case of clause (C), to the extent such breaches or inaccuracies are of a type for which insurance has not been obtained on commercially reasonable terms), and (y) shall also include amounts paid into escrow or subject to holdbacks, and amounts subject to post-closing purchase price adjustments; provided that all such obligations are equally applicable on a several and not joint basis to each Drag-Along Seller based on the consideration to be received in respect of all Company Securities Transferred in connection with such Approved Sale. The foregoing notwithstanding, (1) without the written consent of a Drag-Along Seller, the amount of such obligations and liabilities for which such Drag-Along Seller shall be responsible shall not exceed the net proceeds received by such Drag-Along Seller in connection with such Approved Sale, and, to the extent that an indemnification escrow has been established, such obligations and liabilities shall be satisfied out of any funds escrowed for such purpose prior to recourse against such Drag-Along Seller, (2) a Drag-Along Seller shall not be responsible for the fraud or willful misconduct of any other Drag-Along Seller or any of the Dragging Members or any indemnification obligations and liabilities for (I) breaches of representations and warranties made by any other Drag-Along Seller with respect to such other Drag-Along Seller's ownership of and title to Company Securities, organization, authority, or conflicts and consents, or any other matters that relate to such other Drag-Along Seller, or (II) breaches of covenants made by any other Drag-Along Seller relating to such other Drag-Along Seller, and (3) no Drag-Along Seller shall be required to enter into any non-competition or non-solicitation or similar restrictive covenant in connection with such Approved Sale.

13.3 Waiver of Claim. Each Drag-Along Seller hereby agrees to refrain from asserting any claim or commencing any suit (i) challenging the Approved Sale or this Agreement, (ii) alleging a breach of any duty of the Dragging Members or any Affiliate or associate thereof (including, without limitation, aiding and abetting breach of any duty) in connection with the evaluation, negotiation or entry into the Approved Sale, or the consummation of the transactions contemplated thereby or (iii) seeking to obtain any appraisal rights.

13.4 Proxy; Power of Attorney. THE COMPANY AND EACH COMPANY SECURITY HOLDER HEREBY GRANTS A PROXY AND POWER OF ATTORNEY TO ANY NOMINEE OF THE DRAGGING MEMBER(S) (THE "NOMINEE") TO TAKE ALL NECESSARY ACTIONS AND EXECUTE AND DELIVER ALL DOCUMENTS DEEMED NECESSARY AND APPROPRIATE BY SUCH PERSON TO EFFECTUATE THE CONSUMMATION OF ANY APPROVED SALE. SUCH PROXY AND POWER ARE

COUPLED WITH AN INTEREST, ARE PERPETUAL AND IRREVOCABLE, AND BESTOW ON THE NOMINEE THE FULL POWER TO VOTE AND ACT FOR SUCH DRAG-ALONG SELLER WITH RESPECT TO THE CONSUMMATION OF THE APPROVED SALE. The Company Security Holders hereby agree to indemnify, defend and hold the Nominee harmless (severally in accordance with their pro rata share of the consideration received in any such Approved Sale (and not jointly and severally)) against all liability, loss or damage, together with all reasonable costs and expenses (including reasonable legal fees and expenses), relating to or arising from its exercise of the proxy and power of attorney granted hereby. Notwithstanding anything to the contrary contained herein, each Company Security Holder shall indemnify, defend and hold the Dragging Member(s) and their respective Affiliates and Representatives harmless against all liability, loss or damage, together with all costs and expenses (including legal fees and expenses), relating to or arising out of such Company Security Holder's failure to comply with its obligations in respect of such Approved Sale, including, without limitation, costs and expenses in respect of enforcement by the Dragging Member(s) of their rights hereunder.

SECTION 14. TAG-ALONG RIGHTS

14.1 Tag-Along Rights. In the event that one or more Company Security Holders (each, an "Initiating Holder" and, collectively, the "Initiating Holders") desire to effect a Tag-Along Transaction, the Initiating Holders (or a designated Representative acting on their behalf) shall deliver written notice (a "Sale Notice") to each Company Security Holder that holds Company Securities that are Tag-Along Securities (each, a "Tag-Along Seller" and, collectively, the "Tag-Along Sellers") and the Company, in accordance with Section 19.8, at least ten (10) Business Days prior to the consummation of such Tag-Along Transaction, offering the Tag-Along Sellers the opportunity to participate in such Tag-Along Transaction on the terms and conditions set forth in the Sale Notice (which terms and conditions shall be substantially the same as those terms and conditions applicable to the Initiating Holders (except that (i) if the Initiating Holders are given an option as to the form of consideration to be received in exchange for their Company Securities, each of the Tag-Along Sellers shall only need to be given the same option with respect to their Company Securities and (ii) with respect to the Company Securities in respect of each Tag-Along Seller, such Tag-Along Seller will be entitled to its applicable Per Unit Tag Price)). The Sale Notice shall contain a general description of the material terms and conditions of the Tag-Along Transaction, including the total number of each class of Tag-Along Securities proposed to be sold and the proposed amount and form of consideration for the Tag-Along Securities proposed to be sold.

14.2 Exercise of Tag-Along Rights. Each Tag-Along Seller may, by written notice to the Initiating Holders (or their designated Representative) delivered within five (5) Business Days after delivery of the Sale Notice to such Tag-Along Seller, elect to sell Tag-Along Securities in such Tag-Along Transaction, on the terms and conditions set forth in the Sale Notice; provided, however, that if the proposed Transferee in the Tag-Along Transaction desires to purchase a number of any class of Tag-Along Securities that is less than the aggregate number of such class of Tag-Along Securities proposed to be sold by the Initiating Holders and all Tag-Along Sellers electing to sell Tag-Along Securities in such Tag-Along Transaction, then the Initiating Holders may elect to either (i) terminate such Tag-Along Transaction with respect to the Initiating Holders and each Tag-Along Seller or (ii) consummate such Tag-Along

Transaction on the basis of such lesser number of such class of Tag-Along Securities and, upon such election to consummate the Tag-Along Transaction, each Initiating Holder and each electing Tag-Along Seller shall be permitted to sell to such Transferee up to that number of such class of Tag-Along Securities owned or held by such Initiating Holder or such Tag-Along Seller, as the case may be, equal to the product of (x) the total number of such class of Tag-Along Securities to be acquired by the Transferee in the proposed Tag-Along Transaction and (y) such Initiating Holder's or such Tag-Along Seller's (as applicable) proportionate percentage of the total number of Units in such class of Tag-Along Securities owned or held by the Initiating Holders and all electing Tag-Along Sellers collectively.

14.3 Tag-Along Transaction Documents. In connection with any Tag-Along Transaction in which any Tag-Along Seller elects to participate pursuant to this Section 14, each such Tag-Along Seller will take all necessary or desirable actions reasonably requested by the Initiating Holders and/or the Transferee in the Tag-Along Transaction in connection with the consummation of such Tag-Along Transaction, including executing and delivering the applicable purchase agreement, merger agreement, indemnity agreement, escrow agreement, letter of transmittal, release or other agreements or documents governing or relating to such Tag-Along Transaction that the Initiating Holders or the Transferee in such Tag-Along Transaction may request (the "Tag-Along Transaction Documents"). No Company Security Holder shall (i) take any action that might impede, be prejudicial to or be inconsistent with, any Tag-Along Transaction, (ii) assert any claim against the Company or any other Company Security Holder (including any Initiating Holder) in connection with such Tag-Along Transaction, or (iii) disclose to any Person any information related to such Tag-Along Transaction (including, without limitation, the identity of the Transferee, the fact that discussions or negotiations are taking place concerning such Tag-Along Transaction, or any of the terms, conditions or other facts with respect to such Tag-Along Transaction).

14.4 Closing of Tag-Along Transactions. At the closing of any Tag-Along Transaction in which any Tag-Along Seller has elected to participate under this Section 14, such Tag-Along Seller shall deliver at such closing, against payment of the consideration therefor in accordance with the terms of the Tag-Along Transaction Documents, certificates or other documentation (or other evidence thereof reasonably acceptable to the Transferee of such Company Securities) representing its Company Securities to be sold, duly endorsed for transfer if applicable, and such other documents as are deemed reasonably necessary by the Initiating Holders, the Transferee and/or the Company for the proper Transfer of such Company Securities on the books of the Company and in accordance with the Tag-Along Transaction Documents.

14.5 Costs and Expenses. Each Initiating Holder and each Tag-Along Seller electing to participate in a Tag-Along Transaction under this Section 14 will bear its *pro rata* share (based upon its relative percentage of consideration to be received in such Tag-Along Transaction) of the costs and expenses incurred by the Initiating Holders and/or the Company in connection with such Tag-Along Transaction.

14.6 Terms and Conditions; No Liability. Subject to the provisions of this Section 14, the Initiating Holders shall have complete discretion over the terms and conditions of any Tag-Along Transaction, including price, payment terms, conditions to closing, representations, warranties, affirmative covenants, negative covenants, indemnification, releases, holdbacks and

escrows. Neither the Company, any of its Subsidiaries nor any of the Initiating Holders shall have any liability if any Tag-Along Transaction is not consummated for any reason.

14.7 Commercially Reasonable Efforts. The Company shall, and shall use its commercially reasonable efforts to cause its officers, employees, agents, contractors and others under its control to, cooperate and assist in any proposed Tag-Along Transaction and not to take any action which might impede, be prejudicial to or be inconsistent with, any such Tag-Along Transaction. Pending the completion of any proposed Tag-Along Transaction, the Company shall use commercially reasonable efforts to operate in the ordinary course of business and to maintain all existing business relationships in good standing and otherwise comply with the terms of the Tag-Along Transaction Documents to which it is a party.

14.8 Breach of Tag-Along Obligations. If any Tag-Along Seller electing to participate in a Tag-Along Transaction breaches any of its obligations under this Section 14 or under any of the Tag-Along Transaction Documents, then (i) such Tag-Along Seller will not be permitted to participate in such Tag-Along Transaction and the Initiating Holders can proceed to close such Tag-Along Transaction excluding the sale of such Tag-Along Seller's Company Securities therefrom, and (ii) if the number of Company Securities to be sold by the Initiating Holders and the Tag-Along Sellers was calculated pursuant to clause (ii) of Section 14.2, at the option of the Initiating Holders, the number of Company Securities to be sold by the Initiating Holders and the Tag-Along Sellers (excluding the breaching Tag-Along Seller) shall be recalculated pursuant to clause (ii) of Section 14.2 excluding the breaching Tag-Along Seller from such calculation.

14.9 Proxy; Power of Attorney. THE COMPANY AND EACH TAG-ALONG SELLER HEREBY GRANTS A PROXY AND POWER OF ATTORNEY TO ANY NOMINEE OF ANY INITIATING HOLDER (THE "INITIATING HOLDER NOMINEE") TO TAKE ALL NECESSARY ACTIONS AND EXECUTE AND DELIVER ALL DOCUMENTS DEEMED NECESSARY AND APPROPRIATE BY SUCH PERSON TO EFFECTUATE THE MATTERS SPECIFIED IN THIS SECTION 14. SUCH PROXY AND POWER ARE COUPLED WITH AN INTEREST, ARE PERPETUAL AND IRREVOCABLE, AND BESTOW ON THE INITIATING HOLDER NOMINEE THE FULL POWER TO VOTE AND ACT FOR SUCH TAG-ALONG SELLER WITH RESPECT TO THE CONSUMMATION OF THE TAG-ALONG TRANSACTION. The Tag-Along Sellers hereby agree to indemnify, defend and hold the Initiating Holder Nominee harmless (severally in accordance with their pro rata share of the consideration received in the consummation of any such Tag-Along Transaction (and not jointly and severally)) against all liability, loss or damage, together with all reasonable costs and expenses (including reasonable legal fees and expenses), relating to or arising from its exercise of the proxy and power of attorney granted hereby. Notwithstanding anything to the contrary contained herein, each Tag-Along Seller shall indemnify, defend and hold the Initiating Holder(s) and their respective Affiliates and Representatives harmless against all liability, loss or damage, together with all costs and expenses (including legal fees and expenses), relating to or arising out of such Tag-Along Seller's failure to comply with its obligations in respect of such Tag-Along Transaction, including, without limitation, costs and expenses in respect of enforcement by the Initiating Holder(s) of their rights hereunder.

SECTION 15. PREEMPTIVE RIGHTS

15.1 Preemptive Rights. Except as set forth in Section 15.4, if the Company or any Subsidiary of the Company proposes to issue any equity interests (including any equity securities, warrants, rights, calls, options or other securities or instruments exchangeable or exercisable for, or convertible into, directly or indirectly, equity interests in the Company or any Subsidiary thereof) (collectively, the "Preemptive Securities") each Major Holder that is an "accredited investor" (each, a "Preemptive Member") shall have the right (the "Preemptive Right") to elect to purchase (or to delegate an Affiliate to purchase) for the same price (net of any underwriting discounts or sales commissions), and on the same terms and conditions as such Preemptive Securities of the same type are proposed to be offered to others, Preemptive Securities up to such Preemptive Member's Preemptive Amount. "Preemptive Amount" shall mean the maximum number of Preemptive Securities proposed to be issued in the relevant issuance multiplied by a fraction, the numerator of which shall be the number of Units owned by such Preemptive Member immediately prior to the issuance and the denominator of which shall be the total number of Units owned by all Preemptive Members immediately prior to such issuance.

15.2 Preemptive Reply. The Company shall cause to be given to each Preemptive Member prior to the proposed issuance a written notice setting forth the consideration that the Company intends to receive and the terms and conditions upon which the Preemptive Securities shall be issued (the "Preemptive Notice"). After receiving a Preemptive Notice, any Preemptive Member that desires to exercise its Preemptive Right must give notice to the Company in writing, within five (5) Business Days after the date that such Preemptive Notice is delivered, specifying (i) that such Preemptive Member (or an Affiliate thereof) desires to purchase Preemptive Securities of such issuance and (ii) the number of such Preemptive Securities, up to the applicable Preemptive Amount (the "Preemptive Reply"). Such Preemptive Reply shall also include the maximum number of Preemptive Securities the Preemptive Member (or an Affiliate thereof) would be willing to purchase in the event any other Preemptive Member elects to purchase less than its pro rata portion of such Preemptive Securities. If any Preemptive Member fails to elect to purchase its full pro rata portion of such Preemptive Securities, the Company shall allocate any remaining amount among those Preemptive Members who have indicated in their Preemptive Reply a desire to purchase Preemptive Securities in excess of their respective pro rata portion. Such allocation of such remaining amount shall be made pro rata in accordance with the Units owned by each such Preemptive Member (immediately prior to giving effect to the issuance of the Preemptive Securities) relative to the aggregate number of Units owned by the Preemptive Members that have elected to purchase more than their pro rata portion of such Preemptive Securities (up to, in the case of each such Preemptive Member, the maximum number specified in such Preemptive Member's Preemptive Reply). A Preemptive Reply shall constitute an irrevocable commitment by such Preemptive Member (or an Affiliate thereof) to purchase such Preemptive Securities if the issuance occurs on the terms contemplated in the Preemptive Notice. The closing of the sale pursuant to a Preemptive Reply shall occur concurrently with the closing of the issuance giving rise to the Preemptive Right, but no later than ninety (90) days following the expiration of such five (5) Business Day period. After such five (5) Business Day period, any Preemptive Securities not subscribed for pursuant to valid Preemptive Replies may, during the period not exceeding ninety (90) days following the expiration of such five (5) Business Day period, be issued to third parties on terms and

conditions no less favorable to the Company, and at a price not less than the price set forth in the Preemptive Notice. Any such Preemptive Securities not issued during such ninety (90) day period shall thereafter again be subject to the Preemptive Rights provided for in this Section 15. In the event that the consideration received by the Company in connection with an issuance is property other than cash, each Preemptive Member (or an Affiliate thereof) that elects to exercise its Preemptive Right pursuant to this Section 15.2 may, at its election, pay in cash the fair market value, as determined by the Board in good faith, of such non-cash consideration on a per-Preemptive Security basis.

15.3 Initial Subscribing Member. Notwithstanding anything to the contrary contained herein, the Company may, in order to expedite the issuance of Preemptive Securities under this Section 15, issue all or a portion of such Preemptive Securities to one or more Persons (each, an "Initial Subscribing Member"), without complying with the provisions of Sections 15.1 and 15.2; provided that, in connection with such issuance, either (i) each Initial Subscribing Member agrees to offer to sell to each Preemptive Member (or an Affiliate thereof) that is an "accredited investor" and that is not an Initial Subscribing Member (each such Preemptive Member (or an Affiliate thereof), an "Other Accredited Member") its respective Preemptive Amount of such Preemptive Securities on the same terms and conditions as issued to the Initial Subscribing Members or (ii) the Company shall offer to sell an additional amount of such Preemptive Securities to each Other Accredited Member only in an amount and manner that provides such Other Accredited Members with rights substantially similar to the rights outlined in Sections 15.1 and 15.2. The Initial Subscribing Members or the Company, as applicable, shall offer to sell such Preemptive Securities to each Other Accredited Member within sixty (60) days after the closing of the purchase of the Preemptive Securities by the Initial Subscribing Members. In the event of an expedited issuance of Preemptive Securities under this Section 15.3, the Initial Subscribing Members and the Company shall not, until the Other Accredited Members shall have had the opportunity to purchase such Preemptive Securities pursuant to this Section 15.3 in respect thereof, make any distributions on Preemptive Securities or engage in any Tag Along Transaction or Drag Along Transaction that would cause such Other Accredited Members to be treated differently than if such Preemptive Securities were issued in compliance with Sections 15.1 and 15.2 (it being understood that making any such distributions or engaging in any such Tag Along Transaction or Drag Along Transaction shall be deemed not to cause such Other Accredited Members to be treated so differently if provision is made to include in or provide to such Preemptive Securities upon or promptly following issuance thereof such distributions, or participation in such Tag Along Transaction or Drag Along Transaction, as the case may be).

15.4 Certain Exceptions. Notwithstanding anything to the contrary contained herein, the provisions of this Section 15 shall not apply to issuances by the Company or any Subsidiary of the Company: (i) to any direct or indirect wholly owned Subsidiary of the Company; (ii) upon the exercise or conversion of any Unit Equivalents; (iii) to Officers, employees, Managers, independent contractors, or consultants of the Company or any of its Subsidiaries in connection with such Person's employment, independent contractor, or consulting arrangements with the Company or any of its Subsidiaries, in each case to the extent approved by the Board or the appropriate committee of the Board or pursuant to an employee benefit plan or arrangement approved by the Board or the appropriate committee of the Board; (iv) (A) in any business combination or acquisition transaction involving the Company or any of its Subsidiaries, (B) in

connection with any joint venture or strategic partnership entered into primarily for purposes other than raising capital (as determined by the Board or the appropriate committee of the Board in good faith), or (C) to financial institutions, commercial lenders, broker/finders, or any similar party, or their respective designees, in connection with the incurrence or guarantee of indebtedness by the Company or any of its Subsidiaries, in each case to the extent approved by the Board or the appropriate committee of the Board; (v) in connection with any split, dividend paid on a proportionate basis to all holders of the affected class of security, or recapitalization approved by the Board; (vi) in respect of which this Section 15 is expressly waived by the Preemptive Members owning at least a majority of the outstanding Units owned by the Preemptive Members; provided, however, that no Preemptive Member (nor any Affiliate thereof) is permitted to subscribe for any or all of such issuance or otherwise purchase any such Preemptive Securities in connection therewith, or (vii) pursuant to or after a Public Offering.

SECTION 16. DISSOLUTION; LIQUIDATION AND WINDING UP

16.1 Dissolution. The Company shall be dissolved and its affairs wound up on the first to occur of any of the following events:

(a) the decision of a majority of the Board (which majority must include, for so long as the Tier 1 Holder Group has the right to appoint and designate two (2) Managers pursuant to Section 7.4(a)(ii), at least one (1) Tier 1 Manager) to conduct a Liquidation (other than a Deemed Liquidation Event); or

(b) the entry of a decree of judicial dissolution of the Company under Section 18-801(4) or 18-801(5) of the Act.

16.2 Final Accounting. Upon the dissolution of the Company, a proper accounting shall be made from the date of the last previous accounting to the date of dissolution.

16.3 Liquidation and Winding Up.

(a) Dissolution of the Company shall be effective as of the date on which the event occurs giving rise to the dissolution and all Members shall be given prompt notice thereof in accordance with Section 19.8, but the Company and this Agreement shall not terminate until the Company has been wound up and the remaining assets of the Company have been distributed as provided for in Section 16.3(c). Notwithstanding the dissolution of the Company, prior to the termination of the Company, the business, assets and affairs of the Company shall continue to be governed by this Agreement.

(b) Upon the dissolution of the Company, the Board or, if there is no Board, a Person selected by the Company Security Holders that collectively own Units represent at least a majority of the Units outstanding on a Fully Diluted Basis owned by all Members shall act as the liquidator (the "Liquidator") of the Company to wind up the Company. The Liquidator shall have full power and authority to sell, assign and encumber any or all of the Company's assets and to wind up and liquidate the affairs of the Company in an orderly and business-like manner.

(c) The Liquidator shall distribute all proceeds from liquidation in the following order of priority: (i) first, to the expenses of the liquidation, (ii) second, to the creditors

of the Company (including creditors who are Members) in satisfaction of the liabilities of the Company (whether by payment or the making of reasonable provision for payment thereof); and (iii) third, to the Members in accordance with Section 4.1.

(d) The Liquidator shall determine whether any assets of the Company shall be liquidated through sale or shall be distributed in kind. A distribution in kind of an asset to a Member shall be considered, for the purposes of this Section 16, a distribution in an amount equal to the Fair Market Value of the assets so distributed as determined by the Liquidator in its sole and absolute discretion and shall be made on a pro rata basis.

16.4 Cancellation of Certificate. Upon the completion of the distribution of Company assets as provided in Section 16.3, the Company shall be terminated and the Person acting as Liquidator shall cause the cancellation of the Certificate of Formation and shall take such other actions as may be necessary or appropriate to terminate the Company.

SECTION 17. CONFIDENTIALITY

Each Company Security Holder agrees that Confidential Information has been and may be made available to it in connection with its interest in the Company or any of its Subsidiaries. Each Company Security Holder agrees not to divulge or communicate to any Person (including, without limitation, a Competitor or an Affiliate of a Competitor), or use for any purpose, other than in connection with such Company Security Holder's investment in the Company or any of its Subsidiaries or in the case of any Company Security Holder who is an employee or other service provider of the Company or any of its Subsidiaries, in connection with the performance of his or her duties on behalf of the Company and its Subsidiaries, in each case, in whole or in part, Confidential Information, without the prior written consent of the Company or any of its Subsidiaries; provided that (a) Confidential Information may be disclosed if legally compelled (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process), or in response to a request from a regulatory or self-regulatory or supervisory authority having or asserting jurisdiction over the applicable Company Security Holder (collectively, "Compelled"), and (b) each Company Security Holder may disclose Confidential Information to its Affiliates and its and their respective partners, members, equityholders, advisors, Managers, Officers, employees, agents, accountants, attorneys, advisors, existing and potential investors, or Persons who have expressed a bona fide interest in becoming partners or members in such Company Security Holder or its related investment funds, or an acquiror or potential acquiror of Company Securities owned by the Company Security Holder to which a Transfer would not be prohibited pursuant to the terms hereof (collectively, the "Representatives"), so long as (i) such Representatives agree to keep such information confidential on substantially the same, and no less burdensome, terms than those set forth in this Section 17, and (ii) such Company Security Holder shall use commercially reasonable efforts to, or cause their respective equity owners to, enforce their respective rights in connection with a breach of such confidentiality obligations by any Person receiving the Confidential Information pursuant to this clause (b). If any Company Security Holder or Representative thereof becomes Compelled to disclose any of the Confidential Information, such Member or Representative shall provide the Company with prompt and, if possible, prior written notice of such requirement to disclose such Confidential Information. Upon receipt of such notice, the Company may seek a protective order or other appropriate remedy at its expense. If such

protective order or other remedy is not obtained, such Company Security Holder and its Representative shall disclose only that portion of the Confidential Information which is legally required to be disclosed (as determined in good faith by counsel to such Company Security Holder) and shall, at the request and expense of the Company, take all reasonable steps to preserve the confidentiality of the Confidential Information. In addition, neither such Company Security Holder nor its Representative shall oppose any action (and such Company Security Holder and its Representatives will, if and to the extent requested by the Company and legally permissible to do so, cooperate with and assist the Company, at the Company's expense and on a reasonable basis, in any reasonable action) by the Company to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. Each Company Security Holder agrees that money damages would not be a sufficient remedy for any breach of this Section 17 by a Company Security Holder, and that in addition to all other remedies, the Company shall be entitled to injunctive or other equitable relief as a remedy for any such breach. Each Company Security Holder agrees not to oppose the granting of such relief and agrees to waive any requirement for the securing or posting of any bond in connection with such remedy.

SECTION 18. REPRESENTATIONS AND WARRANTIES

18.1 Representations and Warranties of the Members. Each Member, severally and not jointly, represents and warrants to the Company and the other Members as follows:

(a) The execution, delivery and performance of this Agreement by such Member do not and will not violate (i) any provision of the certificate or articles of incorporation, bylaws, operating agreement, partnership agreement or other organizational documents of such Member (if applicable), (ii) any provision of applicable law or regulation, any order of any court or other agency of government, or (iii) any provision of any indenture, agreement or other instrument to which such Member or any of such Member's properties or assets is bound, or conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument.

(b) This Agreement has been duly executed and delivered by such Member, and, when executed by the other parties hereto, will constitute the legal, valid and binding obligation of such Member, enforceable against such Member in accordance with its terms, subject to applicable bankruptcy, insolvency and other laws affecting the enforceability of creditors' rights generally and the discretion of courts in granting or denying equitable remedies.

18.2 Representations and Warranties of the Company. The Company represents and warrants to each Member as follows:

(a) The execution, delivery and performance of this Agreement by the Company do not and will not violate (i) any provision of this Agreement, (ii) any provision of applicable law or regulation, any order of any court or other agency of government, or (iii) any provision of any indenture, agreement or other instrument to which the Company or any of its properties or assets is bound, or conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument.

(b) This Agreement has been duly executed and delivered by the Company, and, when executed by the other parties hereto, will constitute the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

SECTION 19. MISCELLANEOUS

19.1 Duration of Agreement. The rights and obligations of the Company Security Holders and the Company under Section 7 (Board and Officers), Section 8 (Information Rights), Section 11 (Additional Company Security Holders), Section 12 (Transfers By Company Security Holders), Section 13 (Drag-Along Rights), Section 13 (Tag-Along Rights), Section 15 (Preemptive Rights) and Section 19.16 (Issuances of Company Securities) shall terminate upon a Qualified IPO. Except as otherwise provided or specified in this Agreement, the rights and obligations of any Company Security Holder under this Agreement shall terminate, as to such Company Security Holder, upon the Transfer in accordance with this Agreement or disposition pursuant to an effective registration statement under the Securities Act and in compliance with all applicable state securities and "blue sky" laws of all Company Securities owned by such Company Security Holder, and as to all Company Security Holders upon the final distribution of proceeds in connection with a Liquidation in accordance with the terms of this Agreement.

19.2 Severability. If any provision of this Agreement or the application of any such provision to any Person(s) or circumstance(s) shall be held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall remain in full force and be effectuated as if such illegal, invalid, or unenforceable provision is not part hereof.

19.3 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware (without giving effect to choice of law principles thereof to the extent that the application of the laws of another jurisdiction would be required thereby).

19.4 Jurisdiction and Venue. Subject to the proviso to the last sentence of this Section 19.4, each of the parties hereto (i) consents to submit itself to the exclusive personal jurisdiction of the Chancery Court of Delaware and, if such court declines jurisdiction, any Federal court located in the State of Delaware in the event of any action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court and (iii) agrees that it will not bring any action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the Chancery Court of Delaware and, if such court declines jurisdiction, a Federal court sitting in the State of Delaware. In any action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, each party irrevocably and unconditionally waives and agrees not to assert by way of motion, as a defense or otherwise any claims that it is not subject to the jurisdiction of the above courts, that such action is brought in an inconvenient forum or that the venue of such action is improper; provided, however, that, notwithstanding anything to the contrary in this Section 19.4 or otherwise, the Company shall retain the right to bring any such action arising out of or relating to this Agreement or any of the transactions contemplated hereby, to the extent that the subject matter of such action is contemplated by the

Plan or the Disclosure Statement (as defined in the Plan), in the United States Bankruptcy Court for the District of Delaware, and each of the parties hereto (i) consents to submit itself to the exclusive personal jurisdiction of the Chancery Court of Delaware and, if such court declines jurisdiction, any Federal court located in the State of Delaware in the event of any action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court.

19.5 Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for the giving of notices pursuant to Section 19.8.

19.6 Dividends. The provisions of this Agreement shall apply to any and all Company Securities that may be issued in respect of, in exchange for, or in substitution for Company Securities, by reason of any dividend, distribution, split, reverse split, combination, recapitalization, reclassification, or otherwise in such a manner as to reflect the intent and meaning of the provisions hereof.

19.7 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto (and their respective heirs, executors, administrators, successors and assigns) and with respect to Sections 10.1 and 10.2, the Protected Persons, and nothing herein, express or implied, is intended to or shall confer upon any other Person, including any creditor of the Company, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

19.8 Notices.

(a) All notices or other communications which are required or permitted hereunder shall be in writing and shall be deemed to have been given if (i) personally delivered or sent by facsimile or electronic mail (in each case, subject to the receipt of acknowledgment of successful transmission), (ii) sent by nationally recognized overnight courier or (iii) sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

(A) If to the Company:

Southcross Energy Partners LLC
[___]
[___]
Attn: [ ]
E-mail Address: [ ]

With a copy to:

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019-6099
Attn: A. Mark Getachew
Joseph Minias
E-mail Address: mgetachew@willkie.com

jminias@willkie.com

(B) If to any Member or Company Security Holders, to their respective addresses set forth on Schedule A (or such other address provided by such Person to the Company for purposes of notice (in which case, the Company may update Schedule B)).

(b) Any such communication shall be deemed to have been received (A) when delivered, if personally delivered or sent by email or facsimile, (B) the next Business Day after delivery, if sent by nationally recognized overnight courier, and (C) on the third Business Day following the date on which the piece of mail containing such communication is posted, if sent by first-class mail.

19.9 Modification. Except as expressly provided herein (including Section 6.1 and Section 19.15), this Agreement and any term of this Agreement (including all exhibits, appendixes, annexes, schedules and other agreements and documents expressly referenced herein or therein) may only be amended, modified or restated and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively, by merger, operation of law or otherwise), by a written instrument duly executed by the Company and agreed in writing or approved by a majority of the Board; provided, however, that (i) for so long as the Tier 1 Holder Group owns any Company Securities, no amendment, modification or waiver to this clause (i) or any provision with respect to the Tier 1 Managers shall be effective without the written consent of the Tier 1 Holder Group, (ii) for so long as the Tier 2 Holder Group, owns any Company Securities, no amendment, modification or waiver to this clause (ii) or any provision with respect to the Tier 2 Manager shall be effective without the written consent of the Tier 2 Holder Group, (iii) no amendment, modification, or waiver that would be adverse to any Company Security Holder in a manner that is disproportionate relative to any other Company Security Holder shall be effective against such disproportionately affected Company Security Holder without its prior written consent (or, in the case of any amendment, modification or waiver that would disproportionately affect more than one similarly situated Company Security Holder, the prior written consent of such disproportionately affected Company Security Holders holding a majority of the Units (on a Fully Diluted Basis) held by such Company Security Holders), and (iv) no amendment or waiver to this clause (iv) or clause (iii) shall be effective with respect to any Company Security Holder without its written consent. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each current Company Security Holder, each future Company Security Holder, and the Company.

19.10 Entire Agreement. This Agreement (including all exhibits, appendixes, annexes, schedules and other agreements and documents expressly referenced herein or therein) constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith.

19.11 Several Obligations; Sole Recourse. Notwithstanding anything to the contrary contained in this Agreement, the obligations of each Member hereunder shall be several, not joint and several. Each party, by its acceptance of the benefits hereof, covenants, agrees and acknowledges that no person other than persons that are expressly named as parties hereto shall

have any obligation hereunder and that, notwithstanding the organizational structure of a party, no recourse hereunder or under any documents or instruments delivered in connection herewith shall be had against any current or future Manager, Officer, agent, employee, general or limited partner, member, Manager, securityholder or Affiliate of any party hereto or any current or future Manager, Officer, agent, employee, general or limited partner, member, Manager, securityholder, Affiliate or assignee of any of the foregoing (each, a "Non-Recourse Person"), whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any Non-Recourse Person, as such, for any obligations of any party under this Agreement or any documents or instruments delivered in connection herewith or for any claim based on, in respect of or by reason of such obligations or their creation.

19.12 Consent of Spouse. If any Company Security Holder is a natural person and married on the date of this Agreement, such Company Security Holder shall provide prompt written notice thereof to the Company and the Company may require that such Company Security Holder's spouse execute and deliver to the Company a consent of spouse in the form of Exhibit B hereto ("Consent of Spouse"), effective on the date hereof, as a condition to such Company Security Holder's ownership of Company Securities. If the Company requests such Consent of Spouse, such Company Security Holder shall use reasonable best efforts to cause such Consent of Spouse to be so executed and delivered. Notwithstanding the execution and delivery thereof, such consent shall not be deemed to confer or convey to the spouse any rights in such Company Security Holder's Company Securities that do not otherwise exist by operation of law. If any Company Security Holder should marry or remarry subsequent to the date of this Agreement, the Company may request, as a condition to such Company Security Holder's ownership of Company Securities, that such Company Security Holder, within thirty (30) days following such change in marital status, obtain such spouse's acknowledgement of and consent to the existence and binding effect of all restrictions contained in this Agreement by causing such spouse to execute and deliver a Consent of Spouse acknowledging the restrictions and obligations contained in this Agreement and agreeing and consenting to the same.

19.13 Waiver of Jury Trial. To the fullest extent permitted by law, each of the parties irrevocably waives all right to trial by jury in any action or counterclaim arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER AND (B) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY.

19.14 Absence of Presumption. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting or causing any instrument to be drafted.

19.15 Proportional Adjustment. Wherever in this Agreement there is a reference to a specific number of Company Securities of the Company of any class or series, then, upon the occurrence of any subdivision, combination or dividend of such class or series of security, the specific number of securities so referenced in this Agreement shall automatically be proportionally adjusted to reflect the effect on the outstanding number of such class or series of

security by such subdivision, combination or dividend. Notwithstanding anything to the contrary herein, the Company may amend and restate this Agreement to reflect such adjustment and any other prior amendments that have been properly adopted and effected in accordance herewith, without any additional consent required.

19.16 Issuances of Company Securities. Any issuance or attempted issuance of Company Securities in violation of any provisions of this Agreement shall be void, and the Company shall not record any such issuance on its books.

19.17 Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts taken together shall constitute but one agreement.

19.18 Further Assurances. At any time or from time to time after the date hereof, the parties agree to cooperate with each other, and at the request of any other party, to execute and deliver any further instruments or documents and to take all such further action as the other party may reasonably request in order to carry out the intent of the parties hereunder.

* * * * *

IN WITNESS WHEREOF, the Company has executed this Agreement as of the date first above written.

SOUTHCROSS ENERGY PARTNERS LLC

By:_____
Name:
Title:

SCHEDULE A
Effective Date Members and Company Security Holders as of the Effective Date

[To come.]

SCHEDULE B
Members and Company Security Holders

[To come.]

SCHEDULE C
Officers

[●] – Chief Executive Officer

[●] – Executive Vice President & Chief Financial Officer

[●] – Executive Vice President

[●] – Executive Vice President

[●] – Senior Vice President, General Counsel & Secretary

SCHEDULE D
Competitors

[●][5]

[5] **Note to Draft:** To come.

EXHIBIT A
Form of Joinder Agreement

FORM OF ADDITIONAL COMPANY SECURITY HOLDER JOINDER AGREEMENT TO LIMITED LIABILITY COMPANY AGREEMENT OF SOUTHCROSS ENERGY PARTNERS LLC

Dated as of [_____]

The undersigned hereby agrees to become a party to the [Amended and Restated] Limited Liability Company Agreement of Southcross Energy Partners LLC (the "Company"), dated as of [____] (as amended, supplemented or otherwise modified from to time to time, the "Agreement"), and shall be entitled to all of the rights and subject to all of the obligations of a Company Security Holder and Member (each as defined in the Agreement), as applicable, under the Agreement. The undersigned hereby represents and warrants that he, she or it is an "accredited investor" as such term is defined under Regulation D of the Securities Act. The undersigned hereby acknowledges that all Company Securities (as defined in the Agreement) owned by the undersigned shall be deemed to be Company Securities, as applicable, for all purposes of the Agreement. If the undersigned is a Transferee of such Company Securities, the undersigned hereby assumes the rights and obligations of its transferor in respect of beneficial ownership of such Company Securities to the extent permitted pursuant to the Agreement. The undersigned hereby authorizes the Company to add the name of the undersigned, the number and type of Company Securities Transferred/granted to the undersigned, the date of such Transfer/grant, the address of the undersigned, and its transferor, if applicable, to Schedule B of the Agreement.

[TRANSFEREE/GRANTEE]

By:_____
Name:_____
Title:_____
Address: _____
_____
Facsimile:_____
Type and Number of Company Securities Transferred/Granted:
_____
_____
Transferor of Company Securities, if applicable:
_____

Acknowledged and Accepted:

Southcross Energy Partners LLC

By:_____
Name:_____
Title:_____

EXHIBIT B
Form of Consent of Spouse

CONSENT OF SPOUSE

I, _____, spouse of _____ acknowledge that I have read the [Amended and Restated] Limited Liability Company Agreement of Southcross Energy Partners LLC, dated as of [_____], [_____], to which this consent is attached as Exhibit B (the "Agreement"), and that I know the contents of the Agreement. I am aware that the Agreement contains, among other provisions, restrictions on the sale or transfer of Company Securities (as defined in the Agreement) that my spouse may own, including any interest I might have therein.

I hereby agree that my interest, if any, in any Company Securities subject to the Agreement shall be irrevocably bound by the Agreement and further understand and agree that any community property interest or quasi-community property interest I may have in such Company Securities shall be similarly bound by the Agreement. If I predecease my spouse at a time when my spouse owns an Company Securities, I hereby agree not to devise or bequeath whatever community property interest or quasi-community property interest I may have in the Company in contravention of the Agreement.

I am aware that the legal, financial and related matters contained in the Agreement are complex and that I am free to seek independent professional guidance or counsel with respect to this consent. I have either sought such guidance or counsel or determined after reviewing the Agreement carefully that I am waiving such right.

By: _____
Name:
Dated: _____

Exhibit C

Proposed Members of New Board and Officers of Reorganized Debtors

Pursuant to the *First Amended Chapter 11 Plan for Southcross Energy Partners L.P. and its Affiliated Debtors* [D.I. 816] (as amended, the "**Plan**"),[1] and in accordance with section 1129(a)(5) of the Bankruptcy Code, the following individuals will serve as the members of the New Board and/or officers of the Reorganized Debtors:

Members of the New Board

Name	Experience and Affiliations
James W. Swent III (Chairman)	James W. Swent III was elected as Chairman, President and Chief Executive Officer of the General Partner on September 17, 2018. Prior to joining the General Partner and Holdings GP, Mr. Swent served as the Chairman of the Board, President and Chief Executive Officer of Paragon Offshore Limited from July 2017 to April 2018, a global supplier of offshore jack up contract drilling services. From July 2003 to December 2015, he was Executive Vice President and Chief Financial Officer of Ensco plc, a global provider of offshore contract drilling services. He joined Ensco in July 2003 as Senior Vice President and Chief Financial Officer and retired in December 2015. Mr. Swent previously held various financial executive positions in the information technology, telecommunications and manufacturing industries, including positions with Memorex Corporation and Nortel Networks. He served as Chief Executive Officer and Chief Financial Officer of Cyrix Corporation from 1996 to 1997 and Chief Financial Officer and Chief Executive Officer of American Pad and Paper Company from 1998 to 2000. Prior to joining Ensco plc, Mr. Swent served as Co-Founder and Managing Director of Amrita Holdings, LLC.
Michael Colodner	Michael Colodner is a Managing Director at Solus Alternative Asset Management LP. He joined the firm at its inception in July 2007, and has been a member of the hedge fund investment team. Prior to this position, Mr. Colodner was an Analyst at Stanfield Capital Partners covering the Utilities and Industrials sectors and a Senior Analyst in the Power and Utilities Investment Banking group at Deutsche Bank Securities Inc. Mr. Colodner began his career in 2004 at Legg Mason Wood Walker Inc. in the Strategic Advisory Investment Banking group, specializing in Mergers and Acquisitions. He graduated summa cum laude with a B.S. in Finance from the University of Maryland in 2004.

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

Conor Ryan	Conor Ryan is a Managing Director at Solus Alternative Asset Management LP. He joined the firm in 2014. Previously, he was a Director/Portfolio Manager at Saba Capital Management, L.P. from 2012-2014, and a Vice President at Deutsche Bank Securities Inc., where he began his career in 2005. He graduated with a Bachelor of Arts from Colgate University in 2005.
Garrick Stannard	Garrick Stannard joined Sound Point in 2015 and is currently a Portfolio Manager for the Credit Opportunities Strategy, Distressed Loan Opportunity Strategy and American Beacon Sound Point Enhanced Income Fund on the Opportunistic Credit platform. Mr. Stannard also serves on the firm's Distressed Loan Opportunity Investment Committee, Credit Opportunities Fund Investment Committee and Risk Committee. Prior to joining Sound Point, Mr. Stannard spent six years as a senior distressed and special-situations Analyst at Aristeia Capital, a credit opportunities hedge fund. Prior to Aristeia, Mr. Stannard was a Senior Analyst at Novator Partners and Context Capital Management. He began his career in the Investment Banking Group at Deutsche Bank, where he spent more than seven years in the Mergers & Acquisitions, Restructuring and Project & Structured Finance groups. Mr. Stannard earned a B.A. in Economics from Colgate University.
TBD	A fifth member of the New Board will be chosen in accordance with the New LLC Agreement, which requires an individual with relevant experience in the oil and gas industry to be elected by a majority of votes entitled to be cast in respect of the New Common Units, New Series A Preferred Units, and New Series B Preferred Units.

Officers

Name	Experience and Affiliations
James W. Swent III (President and Chief Executive Officer)	See above.
William C. Boyer (Chief Operating Officer)	William C. Boyer was appointed Chief Operating Officer of the General Partner in February 2019 and served as Senior Vice President of Operations of the General Partner since 2017 and previously served as Vice President of Operations of the General Partner since 2015. Before joining the General Partner, Mr. Boyer served as General

	Manager of Oxy Midstream Operating Company ("Oxy"), a company specializing in midstream services of petroleum products, from 2014 to 2015. In his role at Oxy, Mr. Boyer oversaw the operations, safety, compliance and overall P&L for all of Occidental's midstream businesses including Centurion Pipeline, its crude oil trucking, its NGL railcar terminal, and its propane and crude oil marine terminal businesses in Ingleside, Texas. Prior to joining Oxy, Mr. Boyer served as President of Centurion Pipeline from 2010 to 2014 where he led the operations, planning, risk management, safety and regulatory functions of the business. Concurrent with his role at Oxy, Mr. Boyer also served as President of Occidental Energy Transportation, a wholly-owned crude oil trucking subsidiary within Occidental Petroleum that gathered and transported crude oil in New Mexico and Texas. Prior to such roles, Mr. Boyer held various leadership positions at Occidental Petroleum Corporation over a span of 30 years, including Occidental of Elk Hills in California, Occidental Chemical Corporation in Houston, and Occidental Petroleum's natural gas businesses at various locations. Mr. Boyer holds a Bachelor of Science in Chemical Engineering from the University of Oklahoma.
Gregory L. Hood (Chief Commercial Officer)	Gregory L. Hood was appointed Senior Vice President and Chief Commercial Officer of the General Partner in March 2019. Mr. Hood previously served as Principal for Energy Logistic Solutions since 2016. Mr. Hood was Senior Vice President of Gas Marketing for Occidental Petroleum Corporation or Oxy from 2000 to 2015, where he was responsible for running the natural gas group including physical and financial trading, origination, and supply and asset management operations. Prior to this, he served as Vice President of Trading for Oxy where he managed the sale of Oxy gas production in the Permian, South Texas and Gulf Coast regions. He also managed gas supply for Oxy chemical plants and co-gens. Before joining Oxy, Mr. Hood served as Director of Trading for KN Energy from 1998 to 2000 with responsibility for the trading of physical gas, managed transport and storage assets in various regions, as well as supplied gas for retail marketing efforts. Mr. Hood's experience also includes leadership roles at MidCon Marketing from 1996 to 1998 and Natural Gas Pipeline Co from 1989 to 1996. Mr. Hood received a Bachelor of Science degree in Marketing and Finance from the University of Houston.

Exhibit D

Employment Agreements for Officers

EXECUTION VERSION

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (this "**Agreement**"), dated as of January __, 2020, is by and between SOUTHCROSS ENERGY PARTNERS LLC, a Delaware limited liability company (the "**Company**"), and Greg Hood (the "**Executive**").

WHEREAS, the Executive is currently employed by Southcross Energy Partners GP, LLC, a Delaware limited liability company ("**Southcross**");

WHEREAS, Southcross and Southcross Energy Partners, L.P., a Delaware limited partnership (the "**Partnership**") shall be reorganized in connection with the Emergence (as defined below); and

WHEREAS, the Company desires to employ the Executive, and the Executive desires to be employed by the Company, in each case on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, terms and conditions set forth herein, and intending to be legally bound hereby, the Company and the Executive hereby agree as follows:

1. **Effectiveness of Agreement; Term of Employment**. This Agreement shall become effective as of the Effective Date (as such term is defined in the First Amended Chapter 11 Plan for the Partnership and its Affiliated Debtors (such plan as modified or amended in accordance with its terms, the "**Amended Chapter 11 Plan**" and the consummation of such Amended Chapter 11 Plan, the "**Emergence**")). Once effective, this Agreement shall remain in full force and effect until terminated in accordance with the provisions of Section 4 of this Agreement (the "**Term**").

2. **Employment and Duties**.

(a) *General*. During the Term, the Executive shall serve as Senior Vice President, Chief Commercial Officer of the Company. The Executive shall have such duties and responsibilities as are commensurate with the Executive's position, as may be assigned to the Executive from time to time by the Chief Executive Officer of the Company (the "**CEO**").

(b) *Services*. During the Term, the Executive shall devote his full-time working time to the Executive's duties hereunder, shall faithfully serve the Company and shall use his best efforts to promote and serve the interests of the Company. Notwithstanding the foregoing, the parties acknowledge and agree that the Executive may engage in speaking, charitable and civic activities; *provided*, that such activities do not conflict with the business and affairs of the Company, interfere, individually or in the aggregate, with the Executive's

performance of his duties hereunder or otherwise result in a violation of this Agreement.

3. **Compensation and Other Benefits**. Subject to the provisions of this Agreement, the Company shall pay and provide the following compensation and other benefits to the Executive during the Term as compensation for services rendered hereunder:

(a) *Base Salary*. The Company shall pay to the Executive an annual salary (the "**Base Salary**") at the rate of $375,000, payable in substantially equal installments in accordance with the Company's ordinary payroll practices.

(b) *2019 Bonus*. The Executive shall receive a bonus of $262,500 for the 2019 calendar year (the "**2019 Bonus**"), subject to the Executive's continued employment through the Payment Date (as defined below). The 2019 Bonus shall be paid in June 2020 (the date of such payment, the "**Payment Date**"). Notwithstanding the foregoing, if, prior to the Payment Date, the Executive's employment is terminated (x) by the Company other than for Cause (as defined below), (y) on account of the Executive's death or Disability (as defined below) or (z) by Executive for Good Reason (as defined below) the Executive shall be entitled to receive the 2019 Bonus no later than June 30, 2020.

(c) *Subsequent Annual Bonuses*. For the 2020 calendar year and each calendar year thereafter during the Term, the Executive shall be eligible to receive an annual bonus (the "**Annual Bonus**") based on the achievement of performance goals established by the Company's board of directors (the "**Board**") at the beginning of each year. The Annual Bonus will have a threshold of 75% of the Base Salary, a target of 87.5% of the Base Salary (the "**Target Bonus**") and a maximum of 100% of the Base Salary, with the actual amount payable determined based on the extent to which the applicable performance goals for such calendar year are achieved. The Annual Bonus may be payable in cash, an equity-based award subject to vesting or a combination thereof at the discretion of the Board; *provided*, that no less than 50% of each such Annual Bonus shall be payable in cash. Any Annual Bonus for the 2020 calendar year or any subsequent calendar year shall be paid on or before March 15 of the year immediately following the year to which such Annual Bonus relates.

(d) *Retention Bonus*. The Executive shall retain the retention bonus provided for under the retention bonus letter dated March 27, 2019 (the "**Retention Agreement**"), subject to the terms provided for therein.

(e) *Long-Term Incentive Plan.* The Executive shall be eligible to participate in any long-term incentive plans established by the Company, and the amount of the Executive's individual awards under such plan shall be determined by the Board in its discretion; *provided*, however, that the Executive shall participate in such plan on terms and conditions (other than individual award

amounts) that are substantially similar to those applicable to any new CEO. For the avoidance of doubt, any such equity-based awards provided to the Executive shall have an exercise price (or other similar threshold value) based on values determined by the Board for purposes of such plan.

(f) *Other Benefits*. During the Term, the Executive shall be entitled to vacation and be eligible to participate in the employee benefit plans and programs applicable generally to other similarly situated executives of the Company, in accordance with the terms of the Company's vacation policy and such plans, as they may be amended from time to time.

4. **Termination of Employment**. The Executive's employment under this Agreement may be terminated under the following circumstances:

(a) *Termination for Cause or Resignation Without Good Reason*. If the Executive's employment with the Company is terminated by the Company for Cause or by the Executive without Good Reason, the Executive shall be entitled to receive:

(i) any accrued but unpaid Base Salary through the date of termination;

(ii) reimbursement for any unreimbursed business expenses incurred by the Executive prior to the date of the Executive's termination and submitted in accordance with Company policy no later than 10 days following the date of termination; and

(iii) such accrued and vested employee benefits, if any, as to which the Executive may be entitled under the employee benefit plans of the Company.

The amounts described in clauses (i) through (iii) above shall hereinafter be referred to as the "**Accrued Obligations**."

(b) *Death or Disability*. If the Executive's employment with the Company terminates due to the Executive's death or Disability, the Executive (or his estate, executor, administrator or trustee, as the case may be) shall be entitled to receive the Accrued Obligations.

(c) *Termination Without Cause or For Good Reason*. If the Executive's employment with the Company is terminated by the Company without Cause or by the Executive for Good Reason, the Executive shall be entitled to receive the Accrued Obligations and, subject to the Executive's execution and non-revocation of the Release (as defined below) and continued compliance with Sections 5 through 7 of this Agreement, (i) the Company shall continue to pay the Executive his Base Salary at the rate in effect at the time of termination for a period of 12 months following the date of termination (the "**Severance Period**"), payable in accordance with the Company's ordinary

payroll practices, (ii) the Company shall pay to the Executive an amount equivalent to 100% of the Target Bonus in a lump sum payable as soon as practicable following the execution and non-revocation of the Release, and (iii) provided that the Executive timely elects COBRA continuation coverage, continued coverage under the group health plan in which the Executive and his dependents were participating as of immediately prior to such termination of employment and reimbursement (the "**Premium Reimbursement**") of the portion of the premiums that the Company would have paid had the Executive's employment continued during the Severance Period until the earlier of (x) the end of such Severance Period or (y) the date on which the Executive becomes eligible to receive group health plan coverage through another employer; *provided further*, that if payment of the Premium Reimbursement would result in excise tax or other penalties imposed on the Company, a dollar amount equal to the Premium Reimbursement that the Company would have paid under this Section 4(c)(iii) during the applicable payment period shall be paid to the Executive, instead of the Premium Reimbursement, as additional cash severance pay. If, following a termination of employment pursuant to this Section 4(c), the Executive breaches any of the provisions of Sections 5 through 7 of this Agreement, the Executive shall forfeit the benefits set forth in clauses (i), (ii) and (iii) of this Section 4(c), and any and all obligations and agreements of the Company with respect to such payments shall thereupon cease.

(d) *Conditions*. As a condition precedent to the Executive's entitlement to any of the payments or other rights described under Section 4(c) other than the Accrued Obligations, the Executive shall execute and not revoke a customary release of claims in favor of the Company Group (as defined below), in a customary form to be provided by the Company (the "**Release**"), which Release must be executed by the Executive and delivered to the Company by no later than the 55th day following the Executive's termination date; *provided*, that if the 55-day period begins in one taxable year and ends in the following taxable year, such payments shall not commence until such following taxable year regardless of when the Executive executes the Release during the 55-day period.

(e) "**Cause**" means the occurrence of any of the following: (i) the Executive's willful failure to satisfactorily perform his lawful and material duties or to devote his full time and effort to his position; (ii) the Executive's material violation of any Company policy, code of conduct or agreement applicable to the Executive; (iii) the Executive's failure to follow lawful and reasonable directives of the Board or the CEO; (iv) the Executive's gross negligence or willful misconduct; (v) the Executive's commission at any time of any act of fraud, embezzlement, misappropriation, material misconduct, conversion of assets, or breach of fiduciary duty; or (vi) the Executive's conviction of (x) a felony or (y) a crime involving moral turpitude (and excluding convictions for traffic violations which do not result in serious bodily injury or death); *provided, however*, that the Executive shall not be deemed to have been terminated for Cause unless (x) written notice has been delivered to him setting forth the Company's reasons for the termination for Cause and (y) the Executive

has not cured (if curable) the breaches or failures set forth in such notice within 10 days after receipt of such notice.

(f) "**Disability**" means the Executive's inability to perform his essential duties as a result of any physical or mental injury, illness or incapacity, which condition can be expected to result in death or can be expected to continue for at least 180 days in any consecutive period of 365 days, as determined by a physician selected by the Board.

(g) "**Good Reason**" means the occurrence of any of the following without the Executive's consent: (i) a material reduction in the Executive's Base Salary, other than any such reduction that applies generally to similarly situated employees of the Company; (ii) a material diminution in the Executive's authority, duties or responsibilities as assigned by the Board or the CEO in accordance with this Agreement; (iii) a material breach by the Company of this Agreement; or (iv) a relocation of the Executive's principal place of employment by more than 50 miles from its location as of the date hereof. Notwithstanding the foregoing, the Executive will not be deemed to have resigned for Good Reason unless (x) the Executive has provided written notice to the Company of the existence of the circumstances providing grounds for termination for Good Reason within 15 days of the initial existence of such grounds, (y) the Company has not cured such circumstances within 30 days from the date on which such notice is provided and (z) the Executive resigns from his employment effective no later than 60 days after the initial existence of such grounds.

(h) *Notice Requirement*. Notwithstanding anything to the contrary in this Agreement, (i) the Executive may terminate his employment without Good Reason by providing the Company 30 days' written notice of such termination; provided, that in the event of such a termination, the Company may, in its sole discretion, by written notice accelerate the date of termination without changing the characterization of such termination as a termination by the Executive without Good Reason, (ii) the Company may terminate the Executive's employment at any time for or without Cause, effective upon the Executive's receipt of a written notice of such termination, (iii) the Executive's employment shall terminate automatically upon the Executive's death and (iv) the Company may terminate the Executive's employment immediately upon the occurrence of a Disability, such termination to be effective upon the Executive's receipt of a written notice of such termination.

5. **Confidentiality**.

(a) *Confidential Information*.

(i) Subject to Section 5(b), the Executive agrees that he shall not at any time, except as required in order to perform his services hereunder in good faith or with the prior written consent of the Company, or, to the extent permitted pursuant to subsection 5(a)(ii), as required by law, directly or indirectly,

(A) use, disseminate, disclose or publish, whether for his benefit or the benefit of any person, firm, corporation or other entity not part of the Company Group, any Confidential Information (as defined below) or (B) deliver to any person, firm, corporation or other entity any document, record, notebook, computer program or similar repository of or containing any Confidential Information. "**Confidential Information**" means (x) confidential or proprietary information or trade secrets of or relating to the Company or any of its Parents, subsidiaries or affiliates (collectively, the "**Company Group**"), including, without limitation, intellectual property in the form of patents, trademarks and copyrights and applications thereof, ideas, inventions, works, discoveries, improvements, information, documents, formulae, practices, processes, methods, developments, source code, modifications, technology, techniques, data, programs, other know-how or materials, in each case, that are confidential and/or proprietary and owned, developed or possessed by the Company Group, whether in tangible or intangible form, or (y) confidential or proprietary information with respect to the Company Group's operations, processes, products, inventions, business practices, strategies, business plans, finances, principals, vendors, suppliers, customers, potential customers, marketing methods, costs, prices, contractual relationships, regulatory status, prospects and compensation paid to employees or other terms of employment. For purposes of this Agreement, "**Parent**" means an entity holding at least 50% of the fully diluted outstanding equity securities of the Company.

(ii) In the event that the Executive becomes legally compelled to disclose any Confidential Information, the Executive shall provide the Company with prompt written notice so that the Company may seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, the Executive shall furnish only that portion of such Confidential Information or take only such action as is legally required by binding order and shall exercise his reasonable efforts to obtain reliable assurance that confidential treatment shall be accorded any such Confidential Information.

(b) *Whistleblower Provision*. The Executive has the right under federal law to certain protections for cooperating with or reporting legal violations to the Securities and Exchange Commission (the "**SEC**") and/or its Office of the Whistleblower, as well as certain other governmental entities and self-regulatory organizations. As such, nothing in this Agreement or otherwise prohibits or limits the Executive from disclosing this Agreement to, or from cooperating with, or reporting violations to, or initiating communications with, the SEC or any other such governmental entity or self-regulatory organization, and the Executive may do so without notifying the Company. Neither the Company nor any of its subsidiaries or affiliates may retaliate against the Executive for any of these activities, and nothing in this Agreement or otherwise requires the Executive to waive any monetary award or other payment that the Executive might become entitled to from the SEC or any other governmental entity or self-regulatory organization. Moreover, nothing in this Agreement or otherwise prohibits the Executive from notifying the Company that the Executive is going to make a report or disclosure to law enforcement. Notwithstanding anything to the contrary

in this Agreement or otherwise, as provided for in the Defend Trade Secrets Act of 2016 (18 U.S.C. § 1833(b)), the Executive will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (i) is made (A) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney, and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Without limiting the foregoing, if the Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, the Executive may disclose the trade secret to his attorney and use the trade secret information in the court proceeding, if the Executive (x) files any document containing the trade secret under seal, and (y) does not disclose the trade secret, except pursuant to court order.

(c) *Exclusive Property*. The Executive confirms that all Confidential Information is and shall remain the exclusive property of the Company Group. All business records, papers and documents, and electronic files (including emails) kept or made by the Executive relating to the business of the Company Group shall be and remain the property of the Company Group. Upon the request and at the expense of the Company, the Executive shall promptly make all disclosures, execute all instruments and papers, and perform all acts reasonably necessary to vest and confirm in the Company, fully and completely, all rights created or contemplated by this Section 5. The Executive further agrees that, upon termination of the Executive's employment with the Company for any reason whatsoever, the Executive shall return to the Company immediately all Confidential Information, memoranda, books, papers, plans, information, letters and other data, and all copies thereof or therefrom, in any way relating to the business of the Company Group.

6. **Non-Competition**. The Executive agrees that, for a period commencing on the Effective Date and ending 12 months after the date of the Executive's termination of employment with the Company for any reason (the "**Restricted Period**"), the Executive shall not, without the prior written consent of the Board, directly or indirectly, and whether as principal or investor or as an employee, officer, director, manager, partner, consultant, agent or otherwise, alone or in association with any other person, firm, corporation or other business organization, carry on, own, manage, operate, participate in, or be employed or engaged by, a Competing Business (as defined below) in any state within the United States or foreign jurisdiction in which the Company or any of its subsidiaries is then engaged, or at any time during the Term becomes or became engaged, in a Competing Business; *provided, however*, that nothing herein shall limit the Executive's right to own not more than 2% of any of the debt or equity securities of any business organization that is then filing reports with the SEC pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended. For purposes of this Agreement, "**Competing Business**" means (i) the business of natural gas gathering, processing, treating, compression and transportation; NGL fractionation and transportation; or sourcing, purchasing,

transporting, storage, and selling natural gas and NGLs, or (ii) any enterprise engaged in any other type of business in which the Company or any of its subsidiaries is engaged, or planning to be engaged, on or prior to the termination of the Executive's employment.

7. **Non-Solicitation**. The Executive agrees that during the Restricted Period, the Executive shall not, directly or indirectly, (i) induce or attempt to induce any employee or consultant of the Company or any of its Parents or subsidiaries to leave the employ or engagement with, or in any way interfere with such employee's or consultant's relationship with, the Company or any of its parents or subsidiaries, (ii) hire or engage directly or through another entity any person who is or was an employee or consultant of the Company or any of its parents or subsidiaries at any time during the six months prior to the date such person is to be so hired or engaged (other than any person who was terminated by the Company or any of its Parents or subsidiaries without cause prior to being so hired), or (iii) induce or attempt to induce any customer, supplier, licensee or other business relation of the Company or any of its subsidiaries to cease doing business with the Company or any of its subsidiaries, or in any way interfere with the relationship between any such customer, supplier, licensee or business relation and the Company or any of its subsidiaries.

8. **Certain Remedies**. The Executive acknowledges that he has carefully read and considered all the terms and conditions of this Agreement, including the restraints imposed upon him pursuant to Sections 5 through 7. The Executive agrees without reservation that (i) each of the restraints contained herein is necessary for the reasonable and proper protection of the goodwill, Confidential Information and other legitimate interests of the Company Group, (ii) each and every one of these restraints is reasonable in respect to subject matter, length of time and geographic area, and (iii) these restraints, individually or in the aggregate, will not prevent him from obtaining other suitable employment during the period in which the Executive is bound by these restraints. Without intending to limit the remedies available to the Company, the Executive agrees that a breach of any of the covenants contained in Sections 5 through 7 may result in material and irreparable injury to the Company Group for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach or threat thereof, the Company shall be entitled to a temporary restraining order or a preliminary or permanent injunction, or both, without bond or other security, restraining the Executive from engaging in activities prohibited by the covenants contained in Sections 5 through 7, or such other relief as may be required specifically to enforce any of the covenants contained in this Agreement. Such injunctive relief in any court shall be available to the Company in lieu of, or prior to or pending determination in, any proceeding. The parties further agree that, in the event that any provision of Sections 5 through 7 shall be determined by any court of competent jurisdiction to be unenforceable by reason of its being extended over too great a time, too large a geographic area or too great a range of activities, such provision shall be deemed to be modified to permit its enforcement to the maximum extent permitted by law.

9. **Nonassignability; Binding Agreement**.

(a) *By the Executive*. This Agreement and any and all rights, duties, obligations or interests hereunder shall not be assignable or delegable by the Executive.

(b) *By the Company*. This Agreement and all of the Company's rights and obligations hereunder shall not be assignable by the Company except as incident to a reorganization, merger or consolidation, or transfer of all or substantially all of the Company's assets, or to an affiliate of the Company.

(c) *Binding Effect*. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, any successors to or assigns of the Company and the Executive's heirs and the personal representatives of the Executive's estate.

10. **Withholding**. Any payments made or benefits provided to the Executive under this Agreement shall be reduced by any applicable withholding taxes or other amounts required to be withheld by law or contract.

11. **Amendment; Waiver**. This Agreement may not be modified, amended or waived in any manner, except by an instrument in writing signed by both parties hereto. The waiver by either party of compliance with any provision of this Agreement by the other party shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by such party of a provision of this Agreement.

12. **Governing Law**. All matters affecting this Agreement, including the validity thereof, are to be governed by, and interpreted and construed in accordance with, the laws of the State of Texas (other than conflict of laws principles), applicable to contracts executed in and to be performed in that State.

13. **Survival of Certain Provisions**. The rights and obligations set forth in Sections 5 through 8 shall survive any termination of this Agreement.

14. **Entire Agreement; Supersedes Previous Agreements**. This Agreement and the Retention Agreement contain the entire agreement and understanding of the parties hereto with respect to the matters covered herein and supersede all prior or contemporaneous negotiations, commitments, agreements and writings with respect to the subject matter hereof.

15. **Notices**. Any notices or other communications provided for in this Agreement shall be sufficient if in writing. In the case of the Executive, such notices or communications shall be effectively delivered if hand-delivered to the Executive at his principal place of employment or if sent by registered or certified mail to the Executive at the last address on file with the Company. In the case of the Company, such notices or communications shall be effectively delivered if

sent by registered or certified mail to the Company at its principal executive offices.

16. **Section 409A**. Notwithstanding anything to the contrary herein, to the extent required by Section 409A of the Internal Revenue Code of 1986, as amended ("**Section 409A**"), a termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of amounts upon or following a termination of employment unless such termination is also a "separation from service" within the meaning of Section 409A. For purposes of Section 409A, each payment made under this Agreement shall be designated as a "separate payment" within the meaning of Section 409A. Notwithstanding anything to the contrary herein, except to the extent any expense, reimbursement or in-kind benefit provided pursuant to this Agreement does not constitute a "deferral of compensation" within the meaning of Section 409A, (x) the amount of expenses eligible for reimbursement or in-kind benefits provided to the Executive during any calendar year will not affect the amount of expenses eligible for reimbursement or in-kind benefits provided to the Executive in any other calendar year, (y) the reimbursements of expenses for which the Executive is entitled to be reimbursed shall be made on or before the last day of the calendar year following the calendar year in which the applicable expense is incurred, and (z) the right to payment or reimbursement or in-kind benefits hereunder may not be liquidated or exchanged for any other benefit.

17. **Severability**. The parties have carefully reviewed the provisions of this Agreement and agree that they are fair and equitable. However, in light of the possibility of differing interpretations of law and changes in circumstances, the parties agree that if any one or more of the provisions of this Agreement shall be determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall, to the extent permitted by law, remain in full force and effect and shall in no way be affected, impaired or invalidated. Moreover, if any of the provisions contained in this Agreement are determined by a court of competent jurisdiction to be excessively broad as to duration, activity, geographic application or subject, it shall be construed, by limiting or reducing it to the extent legally permitted, so as to be enforceable to the extent compatible with then applicable law.

18. **Counterparts**. This Agreement may be executed by either of the parties hereto in counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

SOUTHCROSS ENERGY PARTNERS LLC

By: _____
Name:
Title:

GREG HOOD

_____

EXECUTION VERSION

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (this "**Agreement**"), dated as of January __, 2020, is by and between SOUTHCROSS ENERGY PARTNERS LLC, a Delaware limited liability company (the "**Company**"), and William Boyer (the "**Executive**").

WHEREAS, the Executive is currently employed by Southcross Energy Partners GP, LLC, a Delaware limited liability company ("**Southcross**");

WHEREAS, Southcross and Southcross Energy Partners, L.P., a Delaware limited partnership (the "**Partnership**") shall be reorganized in connection with the Emergence (as defined below); and

WHEREAS, the Company desires to employ the Executive, and the Executive desires to be employed by the Company, in each case on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, terms and conditions set forth herein, and intending to be legally bound hereby, the Company and the Executive hereby agree as follows:

1. **Effectiveness of Agreement; Term of Employment**. This Agreement shall become effective as of the Effective Date (as such term is defined in the First Amended Chapter 11 Plan for the Partnership and its Affiliated Debtors (such plan as modified or amended in accordance with its terms, the "**Amended Chapter 11 Plan**" and the consummation of such Amended Chapter 11 Plan, the "**Emergence**")). Once effective, this Agreement shall remain in full force and effect until terminated in accordance with the provisions of Section 4 of this Agreement (the "**Term**").

2. **Employment and Duties**.

(a) *General*. During the Term, the Executive shall serve as Senior Vice President, Chief Operating Officer of the Company. The Executive shall have such duties and responsibilities as are commensurate with the Executive's position, as may be assigned to the Executive from time to time by the Chief Executive Officer of the Company (the "**CEO**").

(b) *Services*. During the Term, the Executive shall devote his full-time working time to the Executive's duties hereunder, shall faithfully serve the Company and shall use his best efforts to promote and serve the interests of the Company. Notwithstanding the foregoing, the parties acknowledge and agree that the Executive may (i) continue to serve on the boards of directors of Frontier Integrity Solutions and Bayou Midstream, (ii) subject to the approval of the CEO and the Company's board of directors (the "**Board**"), serve on the board of

directors or an advisory panel for up to three private, public or not-for-profit companies or organizations (which, for the avoidance of doubt, shall be inclusive of, and not in addition to, the service on the boards of directors under clause (i) above), and (iii) engage in speaking, charitable and civic activities; *provided*, that the activities set forth in clause (i), (ii) and (iii) do not conflict with the business and affairs of the Company, interfere, individually or in the aggregate, with the Executive's performance of his duties hereunder or otherwise result in a violation of this Agreement.

3. **Compensation and Other Benefits**. Subject to the provisions of this Agreement, the Company shall pay and provide the following compensation and other benefits to the Executive during the Term as compensation for services rendered hereunder:

(a) *Base Salary*. The Company shall pay to the Executive an annual salary (the "**Base Salary**") at the rate of $400,000, payable in substantially equal installments in accordance with the Company's ordinary payroll practices.

(b) *2019 Bonus*. The Executive shall receive a bonus of $262,500 for the 2019 calendar year (the "**2019 Bonus**"), subject to the Executive's continued employment through the Payment Date (as defined below). The 2019 Bonus shall be paid in June 2020 (the date of such payment, the "**Payment Date**"). Notwithstanding the foregoing, if, prior to the Payment Date, the Executive's employment is terminated (x) by the Company other than for Cause (as defined below), (y) on account of the Executive's death or Disability (as defined below) or (z) by Executive for Good Reason (as defined below), the Executive shall be entitled to receive the 2019 Bonus no later than June 30, 2020.

(c) *Subsequent Annual Bonuses*. For the 2020 calendar year and each calendar year thereafter during the Term, the Executive shall be eligible to receive an annual bonus (the "**Annual Bonus**") based on the achievement of performance goals established by the Board at the beginning of each year. The Annual Bonus will have a threshold of 75% of the Base Salary, a target of 100% of the Base Salary (the "**Target Bonus**") and a maximum of 125% of the Base Salary, with the actual amount payable determined based on the extent to which the applicable performance goals for such calendar year are achieved. The Annual Bonus may be payable in cash, an equity-based award subject to vesting or a combination thereof at the discretion of the Board; *provided*, that no less than 50% of each such Annual Bonus shall be payable in cash. Any Annual Bonus for the 2020 calendar year or any subsequent calendar year shall be paid on or before March 15 of the year immediately following the year to which such Annual Bonus relates.

(d) *Retention Bonus*. The Executive shall retain the retention bonus provided for under the retention bonus letter dated March 13, 2019 (the "**Retention Agreement**"), subject to the terms provided for therein.

(e) *Long-Term Incentive Plan.* The Executive shall be eligible to participate in any long-term incentive plans established by the Company, and the amount of the Executive's individual awards under such plan shall be determined by the Board in its discretion; *provided*, however, that the Executive shall participate in such plan on terms and conditions (other than individual award amounts) that are substantially similar to those applicable to any new CEO. For the avoidance of doubt, any such equity-based awards provided to the Executive shall have an exercise price (or other similar threshold value) based on values determined by the Board for purposes of such plan.

(f) *Other Benefits*. During the Term, the Executive shall be entitled to vacation and be eligible to participate in the employee benefit plans and programs applicable generally to other similarly situated executives of the Company, in accordance with the terms of the Company's vacation policy and such plans, as they may be amended from time to time.

4. **Termination of Employment**. The Executive's employment under this Agreement may be terminated under the following circumstances:

(a) *Termination for Cause or Resignation Without Good Reason*. If the Executive's employment with the Company is terminated by the Company for Cause or by the Executive without Good Reason, the Executive shall be entitled to receive:

(i) any accrued but unpaid Base Salary through the date of termination;

(ii) reimbursement for any unreimbursed business expenses incurred by the Executive prior to the date of the Executive's termination and submitted in accordance with Company policy no later than 10 days following the date of termination; and

(iii) such accrued and vested employee benefits, if any, as to which the Executive may be entitled under the employee benefit plans of the Company.

The amounts described in clauses (i) through (iii) above shall hereinafter be referred to as the "**Accrued Obligations**."

(b) *Death or Disability*. If the Executive's employment with the Company terminates due to the Executive's death or Disability, the Executive (or his estate, executor, administrator or trustee, as the case may be) shall be entitled to receive the Accrued Obligations.

(c) *Termination Without Cause or For Good Reason*. If the Executive's employment with the Company is terminated by the Company without Cause or by the Executive for Good Reason, the Executive shall be entitled to receive the Accrued Obligations and, subject to the Executive's

execution and non-revocation of the Release (as defined below) and continued compliance with Sections 5 through 7 of this Agreement, (i) the Company shall continue to pay the Executive his Base Salary at the rate in effect at the time of termination for a period of 12 months following the date of termination (the "**Severance Period**"), payable in accordance with the Company's ordinary payroll practices, (ii) the Company shall pay to the Executive an amount equivalent to 100% of the Target Bonus in a lump sum payable as soon as practicable following the execution and non-revocation of the Release, and (iii) provided that the Executive timely elects COBRA continuation coverage, continued coverage under the group health plan in which the Executive and his dependents were participating as of immediately prior to such termination of employment and reimbursement (the "**Premium Reimbursement**") of the portion of the premiums that the Company would have paid had the Executive's employment continued during the Severance Period until the earlier of (x) the end of such Severance Period or (y) the date on which the Executive becomes eligible to receive group health plan coverage through another employer; *provided further*, that if payment of the Premium Reimbursement would result in excise tax or other penalties imposed on the Company, a dollar amount equal to the Premium Reimbursement that the Company would have paid under this Section 4(c)(iii) during the applicable payment period shall be paid to the Executive, instead of the Premium Reimbursement, as additional cash severance pay. If, following a termination of employment pursuant to this Section 4(c), the Executive breaches any of the provisions of Sections 5 through 7 of this Agreement, the Executive shall forfeit the benefits set forth in clauses (i), (ii) and (iii) of this Section 4(c), and any and all obligations and agreements of the Company with respect to such payments shall thereupon cease.

(d) *Conditions*. As a condition precedent to the Executive's entitlement to any of the payments or other rights described under Section 4(c) other than the Accrued Obligations, the Executive shall execute and not revoke a customary release of claims in favor of the Company Group (as defined below), in a customary form to be provided by the Company (the "**Release**"), which Release must be executed by the Executive and delivered to the Company by no later than the 55th day following the Executive's termination date; *provided*, that if the 55-day period begins in one taxable year and ends in the following taxable year, such payments shall not commence until such following taxable year regardless of when the Executive executes the Release during the 55-day period.

(e) "**Cause**" means the occurrence of any of the following: (i) the Executive's willful failure to satisfactorily perform his lawful and material duties or to devote his full time and effort to his position; (ii) the Executive's material violation of any Company policy, code of conduct or agreement applicable to the Executive; (iii) the Executive's failure to follow lawful and reasonable directives of the Board or the CEO; (iv) the Executive's gross negligence or willful misconduct; (v) the Executive's commission at any time of any act of fraud, embezzlement, misappropriation, material misconduct, conversion of assets, or breach of fiduciary duty; or (vi) the Executive's

conviction of (x) a felony or (y) a crime involving moral turpitude (and excluding convictions for traffic violations which do not result in serious bodily injury or death); *provided*, *however*, that the Executive shall not be deemed to have been terminated for Cause unless (x) written notice has been delivered to him setting forth the Company's reasons for the termination for Cause and (y) the Executive has not cured (if curable) the breaches or failures set forth in such notice within 10 days after receipt of such notice.

(f) "**Disability**" means the Executive's inability to perform his essential duties as a result of any physical or mental injury, illness or incapacity, which condition can be expected to result in death or can be expected to continue for at least 180 days in any consecutive period of 365 days, as determined by a physician selected by the Board.

(g) "**Good Reason**" means the occurrence of any of the following without the Executive's consent: (i) a material reduction in the Executive's Base Salary, other than any such reduction that applies generally to similarly situated employees of the Company; (ii) a material diminution in the Executive's authority, duties or responsibilities as assigned by the Board or the CEO in accordance with this Agreement; (iii) a material breach by the Company of this Agreement; or (iv) a relocation of the Executive's principal place of employment by more than 50 miles from its location as of the date hereof. Notwithstanding the foregoing, the Executive will not be deemed to have resigned for Good Reason unless (x) the Executive has provided written notice to the Company of the existence of the circumstances providing grounds for termination for Good Reason within 15 days of the initial existence of such grounds, (y) the Company has not cured such circumstances within 30 days from the date on which such notice is provided and (z) the Executive resigns from his employment effective no later than 60 days after the initial existence of such grounds.

(h) *Notice Requirement*. Notwithstanding anything to the contrary in this Agreement, (i) the Executive may terminate his employment without Good Reason by providing the Company 30 days' written notice of such termination; provided, that in the event of such a termination, the Company may, in its sole discretion, by written notice accelerate the date of termination without changing the characterization of such termination as a termination by the Executive without Good Reason, (ii) the Company may terminate the Executive's employment at any time for or without Cause, effective upon the Executive's receipt of a written notice of such termination, (iii) the Executive's employment shall terminate automatically upon the Executive's death and (iv) the Company may terminate the Executive's employment immediately upon the occurrence of a Disability, such termination to be effective upon the Executive's receipt of a written notice of such termination.

5. **Confidentiality**.

(a) *Confidential Information*.

(i) Subject to Section 5(b), the Executive agrees that he shall not at any time, except as required in order to perform his services hereunder in good faith or with the prior written consent of the Company, or, to the extent permitted pursuant to subsection 5(a)(ii), as required by law, directly or indirectly, (A) use, disseminate, disclose or publish, whether for his benefit or the benefit of any person, firm, corporation or other entity not part of the Company Group, any Confidential Information (as defined below) or (B) deliver to any person, firm, corporation or other entity any document, record, notebook, computer program or similar repository of or containing any Confidential Information. "**Confidential Information**" means (x) confidential or proprietary information or trade secrets of or relating to the Company or any of its Parents, subsidiaries or affiliates (collectively, the "**Company Group**"), including, without limitation, intellectual property in the form of patents, trademarks and copyrights and applications thereof, ideas, inventions, works, discoveries, improvements, information, documents, formulae, practices, processes, methods, developments, source code, modifications, technology, techniques, data, programs, other know-how or materials, in each case, that are confidential and/or proprietary and owned, developed or possessed by the Company Group, whether in tangible or intangible form, or (y) confidential or proprietary information with respect to the Company Group's operations, processes, products, inventions, business practices, strategies, business plans, finances, principals, vendors, suppliers, customers, potential customers, marketing methods, costs, prices, contractual relationships, regulatory status, prospects and compensation paid to employees or other terms of employment. For purposes of this Agreement, "**Parent**" means an entity holding at least 50% of the fully diluted outstanding equity securities of the Company.

(ii) In the event that the Executive becomes legally compelled to disclose any Confidential Information, the Executive shall provide the Company with prompt written notice so that the Company may seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, the Executive shall furnish only that portion of such Confidential Information or take only such action as is legally required by binding order and shall exercise his reasonable efforts to obtain reliable assurance that confidential treatment shall be accorded any such Confidential Information.

(b) *Whistleblower Provision*. The Executive has the right under federal law to certain protections for cooperating with or reporting legal violations to the Securities and Exchange Commission (the "**SEC**") and/or its Office of the Whistleblower, as well as certain other governmental entities and self-regulatory organizations. As such, nothing in this Agreement or otherwise prohibits or limits the Executive from disclosing this Agreement to, or from cooperating with, or reporting violations to, or initiating communications with, the SEC or any other such governmental entity or self-regulatory organization, and the Executive may

do so without notifying the Company. Neither the Company nor any of its subsidiaries or affiliates may retaliate against the Executive for any of these activities, and nothing in this Agreement or otherwise requires the Executive to waive any monetary award or other payment that the Executive might become entitled to from the SEC or any other governmental entity or self-regulatory organization. Moreover, nothing in this Agreement or otherwise prohibits the Executive from notifying the Company that the Executive is going to make a report or disclosure to law enforcement. Notwithstanding anything to the contrary in this Agreement or otherwise, as provided for in the Defend Trade Secrets Act of 2016 (18 U.S.C. § 1833(b)), the Executive will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (i) is made (A) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney, and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Without limiting the foregoing, if the Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, the Executive may disclose the trade secret to his attorney and use the trade secret information in the court proceeding, if the Executive (x) files any document containing the trade secret under seal, and (y) does not disclose the trade secret, except pursuant to court order.

(c) *Exclusive Property*. The Executive confirms that all Confidential Information is and shall remain the exclusive property of the Company Group. All business records, papers and documents, and electronic files (including emails) kept or made by the Executive relating to the business of the Company Group shall be and remain the property of the Company Group. Upon the request and at the expense of the Company, the Executive shall promptly make all disclosures, execute all instruments and papers, and perform all acts reasonably necessary to vest and confirm in the Company, fully and completely, all rights created or contemplated by this Section 5. The Executive further agrees that, upon termination of the Executive's employment with the Company for any reason whatsoever, the Executive shall return to the Company immediately all Confidential Information, memoranda, books, papers, plans, information, letters and other data, and all copies thereof or therefrom, in any way relating to the business of the Company Group.

6. **Non-Competition**. The Executive agrees that, for a period commencing on the Effective Date and ending 12 months after the date of the Executive's termination of employment with the Company for any reason (the "**Restricted Period**"), the Executive shall not, without the prior written consent of the Board, directly or indirectly, and whether as principal or investor or as an employee, officer, director, manager, partner, consultant, agent or otherwise, alone or in association with any other person, firm, corporation or other business organization, carry on, own, manage, operate, participate in, or be employed or engaged by, a Competing Business (as defined below) in any state within the United States or foreign jurisdiction in which the Company or any of its

subsidiaries is then engaged, or at any time during the Term becomes or became engaged, in a Competing Business; *provided*, *however*, that nothing herein shall limit the Executive's right to own not more than 2% of any of the debt or equity securities of any business organization that is then filing reports with the SEC pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended. For purposes of this Agreement, "**Competing Business**" means (i) the business of natural gas gathering, processing, treating, compression and transportation; NGL fractionation and transportation; or sourcing, purchasing, transporting, storage, and selling natural gas and NGLs, or (ii) any enterprise engaged in any other type of business in which the Company or any of its subsidiaries is engaged, or planning to be engaged, on or prior to the termination of the Executive's employment. For the avoidance of doubt, nothing in this Section 6 shall limit the Executive's ability to serve on a board of directors or advisory panel as otherwise permitted in accordance with Section 2.

7. **Non-Solicitation**. The Executive agrees that during the Restricted Period, the Executive shall not, directly or indirectly, (i) induce or attempt to induce any employee or consultant of the Company or any of its Parents or subsidiaries to leave the employ or engagement with, or in any way interfere with such employee's or consultant's relationship with, the Company or any of its Parents or subsidiaries, (ii) hire or engage directly or through another entity any person who is or was an employee or consultant of the Company or any of its parents or subsidiaries at any time during the six months prior to the date such person is to be so hired or engaged (other than any person who was terminated by the Company or any of its parents or subsidiaries without cause prior to being so hired), or (iii) induce or attempt to induce any customer, supplier, licensee or other business relation of the Company or any of its subsidiaries to cease doing business with the Company or any of its subsidiaries, or in any way interfere with the relationship between any such customer, supplier, licensee or business relation and the Company or any of its subsidiaries.

8. **Certain Remedies**. The Executive acknowledges that he has carefully read and considered all the terms and conditions of this Agreement, including the restraints imposed upon him pursuant to Sections 5 through 7. The Executive agrees without reservation that (i) each of the restraints contained herein is necessary for the reasonable and proper protection of the goodwill, Confidential Information and other legitimate interests of the Company Group, (ii) each and every one of these restraints is reasonable in respect to subject matter, length of time and geographic area, and (iii) these restraints, individually or in the aggregate, will not prevent him from obtaining other suitable employment during the period in which the Executive is bound by these restraints. Without intending to limit the remedies available to the Company, the Executive agrees that a breach of any of the covenants contained in Sections 5 through 7 may result in material and irreparable injury to the Company Group for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach or threat thereof, the Company shall be entitled to a temporary restraining order or a preliminary or permanent

injunction, or both, without bond or other security, restraining the Executive from engaging in activities prohibited by the covenants contained in Sections 5 through 7, or such other relief as may be required specifically to enforce any of the covenants contained in this Agreement. Such injunctive relief in any court shall be available to the Company in lieu of, or prior to or pending determination in, any proceeding. The parties further agree that, in the event that any provision of Sections 5 through 7 shall be determined by any court of competent jurisdiction to be unenforceable by reason of its being extended over too great a time, too large a geographic area or too great a range of activities, such provision shall be deemed to be modified to permit its enforcement to the maximum extent permitted by law.

9. **Nonassignability; Binding Agreement**.

(a) *By the Executive*. This Agreement and any and all rights, duties, obligations or interests hereunder shall not be assignable or delegable by the Executive.

(b) *By the Company*. This Agreement and all of the Company's rights and obligations hereunder shall not be assignable by the Company except as incident to a reorganization, merger or consolidation, or transfer of all or substantially all of the Company's assets, or to an affiliate of the Company.

(c) *Binding Effect*. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, any successors to or assigns of the Company and the Executive's heirs and the personal representatives of the Executive's estate.

10. **Withholding**. Any payments made or benefits provided to the Executive under this Agreement shall be reduced by any applicable withholding taxes or other amounts required to be withheld by law or contract.

11. **Amendment; Waiver**. This Agreement may not be modified, amended or waived in any manner, except by an instrument in writing signed by both parties hereto. The waiver by either party of compliance with any provision of this Agreement by the other party shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by such party of a provision of this Agreement.

12. **Governing Law**. All matters affecting this Agreement, including the validity thereof, are to be governed by, and interpreted and construed in accordance with, the laws of the State of Texas (other than conflict of laws principles), applicable to contracts executed in and to be performed in that State.

13. **Survival of Certain Provisions**. The rights and obligations set forth in Sections 5 through 8 shall survive any termination of this Agreement.

14. **Entire Agreement; Supersedes Previous Agreements**. This Agreement and the Retention Agreement contain the entire agreement and

understanding of the parties hereto with respect to the matters covered herein and supersede all prior or contemporaneous negotiations, commitments, agreements and writings with respect to the subject matter hereof.

15. **Notices**. Any notices or other communications provided for in this Agreement shall be sufficient if in writing. In the case of the Executive, such notices or communications shall be effectively delivered if hand-delivered to the Executive at his principal place of employment or if sent by registered or certified mail to the Executive at the last address on file with the Company. In the case of the Company, such notices or communications shall be effectively delivered if sent by registered or certified mail to the Company at its principal executive offices.

16. **Section 409A**. Notwithstanding anything to the contrary herein, to the extent required by Section 409A of the Internal Revenue Code of 1986, as amended ("**Section 409A**"), a termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of amounts upon or following a termination of employment unless such termination is also a "separation from service" within the meaning of Section 409A. For purposes of Section 409A, each payment made under this Agreement shall be designated as a "separate payment" within the meaning of Section 409A. Notwithstanding anything to the contrary herein, except to the extent any expense, reimbursement or in-kind benefit provided pursuant to this Agreement does not constitute a "deferral of compensation" within the meaning of Section 409A, (x) the amount of expenses eligible for reimbursement or in-kind benefits provided to the Executive during any calendar year will not affect the amount of expenses eligible for reimbursement or in-kind benefits provided to the Executive in any other calendar year, (y) the reimbursements of expenses for which the Executive is entitled to be reimbursed shall be made on or before the last day of the calendar year following the calendar year in which the applicable expense is incurred, and (z) the right to payment or reimbursement or in-kind benefits hereunder may not be liquidated or exchanged for any other benefit.

17. **Severability**. The parties have carefully reviewed the provisions of this Agreement and agree that they are fair and equitable. However, in light of the possibility of differing interpretations of law and changes in circumstances, the parties agree that if any one or more of the provisions of this Agreement shall be determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall, to the extent permitted by law, remain in full force and effect and shall in no way be affected, impaired or invalidated. Moreover, if any of the provisions contained in this Agreement are determined by a court of competent jurisdiction to be excessively broad as to duration, activity, geographic application or subject, it shall be construed, by limiting or reducing it to the extent legally permitted, so as to be enforceable to the extent compatible with then applicable law.

18. **Counterparts**. This Agreement may be executed by either of the parties hereto in counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

SOUTHCROSS ENERGY PARTNERS LLC

By: _____
Name:
Title:

WILLIAM BOYER

_____

EXECUTION VERSION

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (this "**Agreement**"), dated as of January __, 2020, is by and between SOUTHCROSS ENERGY PARTNERS LLC, a Delaware limited liability company (the "**Company**"), and James W. Swent III (the "**Executive**").

WHEREAS, the Executive is currently employed by Southcross Energy Partners GP, LLC, a Delaware limited liability company ("**Southcross**");

WHEREAS, Southcross and Southcross Energy Partners, L.P., a Delaware limited partnership (the "**Partnership**") shall be reorganized in connection with the Emergence (as defined below); and

WHEREAS, the Company desires to employ the Executive, and the Executive desires to be employed by the Company, in each case on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, terms and conditions set forth herein, and intending to be legally bound hereby, the Company and the Executive hereby agree as follows:

1. **Effectiveness of Agreement; Term of Employment**. This Agreement shall become effective as of the Effective Date (as such term is defined in the First Amended Chapter 11 Plan for the Partnership and its Affiliated Debtors (such plan as modified or amended in accordance with its terms, the "**Amended Chapter 11 Plan**" and the consummation of such Amended Chapter 11 Plan, the "**Emergence**")) and remain in full force and effect until June 30, 2020 (the "**Term**").

2. **Employment and Duties**.

(a) *General*. During the Term, the Executive shall initially serve as Chief Executive Officer of the Company. The Executive shall have such duties and responsibilities as are commensurate with the Executive's position and as may be assigned to the Executive from time to time by the board of directors of the Company (the "**Board**"). The Executive acknowledges that the Board may appoint, hire, engage or seek to hire or engage a Chief Executive Officer, Co-Chief Executive Officer or Executive Chairman of the Company during the Term (an "**Appointment**"). For the avoidance of doubt, the Executive agrees that following the Appointment he will remain in the employ of the Company for the remainder of the Term, subject to the terms of this Agreement, and during such period have such title, duties and responsibilities as may be reasonably assigned from time to time by the Board in consultation with the Executive, it being understood that such duties and responsibilities will be limited to providing assistance to facilitate the Company's transition to a new principal executive officer and to answer questions and provide guidance as reasonably requested by

the Board or the new principal executive officer(s) in connection with such transition.

(b) *Services*. During the Term, the Executive shall devote his full-time working time to the Executive's duties hereunder, shall faithfully serve the Company and shall use his best efforts to promote and serve the interests of the Company. Notwithstanding the foregoing, the parties acknowledge and agree that the Executive may engage in speaking, charitable and civic activities; *provided*, that such activities do not conflict with the business and affairs of the Company, interfere, individually or in the aggregate, with the Executive's performance of his duties hereunder or otherwise result in a violation of this Agreement.

3. **Compensation and Other Benefits**. Subject to the provisions of this Agreement, the Company shall pay and provide the following compensation and other benefits to the Executive during the Term as compensation for services rendered hereunder:

(a) *Base Salary*. The Company shall pay to the Executive a monthly base salary (the "**Base Salary**") at the rate of $150,000 per month, payable in substantially equal installments in accordance with the Company's ordinary payroll practices. The Executive shall, if necessary, be entitled to a true-up payment, payable in the first regularly scheduled payroll period after the Effective Date, equal to the difference between (i) the Base Salary and (ii) the amount of base salary actually paid to the Executive for services rendered between January 1, 2020 and the Effective Date.

(b) *2020 Bonus*. The Executive shall receive a bonus (the "**2020 Bonus**") with a minimum payment of $375,000 and a maximum payment of $750,000, as determined in the discretion of the Board, based on a good faith assessment of the Executive's performance during the Term. The 2020 Bonus shall be payable in July 2020, subject to the Executive's continued employment through the expiration of the Term.

(c) *Retention Bonus*. The Executive shall retain the retention bonus provided for under the retention bonus letter dated March 13, 2019 (the "**Retention Agreement**"), subject to the terms provided for therein.

(d) *Other Benefits*. During the Term, the Executive shall be entitled to vacation and be eligible to participate in the employee benefit plans and programs applicable generally to other similarly situated executives of the Company, in accordance with the terms of the Company's vacation policy and such plans, as they may be amended from time to time.

4. **Termination of Employment**. The Executive's employment under this Agreement may be terminated under the following circumstances:

(a) *Termination for Cause or Resignation Without Good Reason*. If the Executive's employment with the Company is terminated by the Company for Cause (as defined below) or by the Executive without Good Reason (as defined below), the Executive shall be entitled to receive:

(i) any accrued but unpaid Base Salary through the date of termination;

(ii) reimbursement for any unreimbursed business expenses incurred by the Executive prior to the date of the Executive's termination and submitted in accordance with Company policy no later than 10 days following the date of termination; and

(iii) such accrued and vested employee benefits, if any, as to which the Executive may be entitled under the employee benefit plans of the Company.

The amounts described in clauses (i) through (iii) above shall hereinafter be referred to as the "**Accrued Obligations**."

(b) *Death or Disability*. If the Executive's employment with the Company terminates due to the Executive's death or Disability (as defined below), the Executive (or his estate, executor, administrator or trustee, as the case may be) shall be entitled to receive the Accrued Obligations.

(c) *Termination Without Cause or For Good Reason*. If the Executive's employment with the Company is terminated by the Company without Cause or by the Executive for Good Reason prior to the expiration of the Term, the Executive shall be entitled to receive the Accrued Obligations and, subject to the Executive's execution and non-revocation of the Release (as defined below) and continued compliance with the restrictive covenants referenced in Section 5 of this Agreement, (i) the Company shall continue to pay the Executive his Base Salary through the expiration of the Term, payable in accordance with the Company's ordinary payroll practices and (ii) the Company shall pay to the Executive the 2020 Bonus (which, for the avoidance of doubt, shall not be less than $375,000), payable at the time that such bonus would have been paid if the Executive remained employed through the expiration of the Term. If, following a termination of employment pursuant to this Section 4(c), the Executive breaches any of the provisions of the restrictive covenants referenced in Section 5, the Executive shall forfeit the amounts set forth in clauses (i) and (ii) of this Section 4(c), and any and all obligations and agreements of the Company with respect to such payments shall thereupon cease.

(d) *Conditions*. As a condition precedent to the Executive's entitlement to any of the payments or other rights described under Section 4(c) other than the Accrued Obligations, the Executive shall execute and not revoke a customary release of claims in favor of the Company and its parents, subsidiaries

and affiliates, in a customary form to be provided by the Company (the "**Release**"), which Release must be executed by the Executive and delivered to the Company by no later than the 55th day following the Executive's termination date; *provided*, that if the 55-day period begins in one taxable year and ends in the following taxable year, such payments shall not commence until such following taxable year regardless of when the Executive executes the Release during the 55-day period.

(e) "**Cause**" means the occurrence of any of the following: (i) the Executive's willful failure to satisfactorily perform his lawful and material duties or to devote his full time and effort to his position; (ii) the Executive's material violation of any Company policy, code of conduct or agreement applicable to the Executive; (iii) the Executive's failure to follow lawful and reasonable directives of the Board; (iv) the Executive's gross negligence or willful misconduct; (v) the Executive's commission at any time of any act of fraud, embezzlement, misappropriation, material misconduct, conversion of assets, or breach of fiduciary duty; or (vi) the Executive's conviction of (x) a felony or (y) a crime involving moral turpitude (and excluding convictions for traffic violations which do not result in serious bodily injury or death); *provided, however*, that the Executive shall not be deemed to have been terminated for Cause unless (x) written notice has been delivered to him setting forth the Company's reasons for the termination for Cause and (y) the Executive has not cured (if curable) the breaches or failures set forth in such notice within 10 days after receipt of such notice.

(f) "**Disability**" means the Executive's inability to perform his essential duties as a result of any physical or mental injury, illness or incapacity, which condition can be expected to result in death or can be expected to continue for at least 180 days in any consecutive period of 365 days, as determined by a physician selected by the Board.

(g) "**Good Reason**" means the occurrence of any of the following without the Executive's consent: (i) a material reduction in the Executive's Base Salary; (ii) a material diminution in the Executive's authority, duties or responsibilities as assigned by the Board in accordance with this Agreement (other than any diminution consistent with Section 2(a) in connection with an Appointment); (iii) a material breach by the Company of this Agreement; or (iv) a relocation of the Executive's principal place of employment by more than 50 miles from its location as of the date hereof. Notwithstanding the foregoing, the Executive will not be deemed to have resigned for Good Reason unless (x) the Executive has provided written notice to the Company of the existence of the circumstances providing grounds for termination for Good Reason within 15 days of the initial existence of such grounds, (y) the Company has not cured such circumstances within 30 days from the date on which such notice is provided and (z) the Executive resigns from his employment effective no later than 60 days after the initial existence of such grounds.

(h) *Notice Requirement*. Notwithstanding anything to the contrary in this Agreement, (i) the Executive may terminate his employment without Good Reason by providing the Company 30 days' written notice of such termination; provided, that in the event of such a termination, the Company may, in its sole discretion, by written notice accelerate the date of termination without changing the characterization of such termination as a termination by the Executive without Good Reason, (ii) the Company may terminate the Executive's employment at any time for or without Cause, effective upon the Executive's receipt of a written notice of such termination, (iii) the Executive's employment shall terminate automatically upon the Executive's death, (iv) the Company may terminate the Executive's employment immediately upon the occurrence of a Disability, such termination to be effective upon the Executive's receipt of a written notice of such termination and (v) the Executive's employment shall terminate automatically upon the expiration of the Term.

5. **Restrictive Covenants**. The Executive acknowledges and agrees that he shall continue to be subject to the restrictive covenants set forth in Section 6 of the Employment Agreement, dated as of September 17, 2018 (the "**Prior Agreement**") between the Executive, the Company and certain other parties thereto; *provided*, that the parties hereto agree that Section 6(c) (Non-Competition) of the Prior Agreement shall terminate and be of no further force and effect as of the date on which the Executive's employment is terminated for any reason.

6. **Nonassignability; Binding Agreement**.

(a) *By the Executive*. This Agreement and any and all rights, duties, obligations or interests hereunder shall not be assignable or delegable by the Executive.

(b) *By the Company*. This Agreement and all of the Company's rights and obligations hereunder shall not be assignable by the Company except as incident to a reorganization, merger or consolidation, or transfer of all or substantially all of the Company's assets, or to an affiliate of the Company.

(c) *Binding Effect*. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, any successors to or assigns of the Company and the Executive's heirs and the personal representatives of the Executive's estate.

7. **Withholding**. Any payments made or benefits provided to the Executive under this Agreement shall be reduced by any applicable withholding taxes or other amounts required to be withheld by law or contract.

8. **Amendment; Waiver**. This Agreement may not be modified, amended or waived in any manner, except by an instrument in writing signed by both parties hereto. The waiver by either party of compliance with any provision

of this Agreement by the other party shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by such party of a provision of this Agreement.

9. **Governing Law**. All matters affecting this Agreement, including the validity thereof, are to be governed by, and interpreted and construed in accordance with, the laws of the State of Texas (other than conflict of laws principles), applicable to contracts executed in and to be performed in that State.

10. **Survival of Certain Provisions**. The rights and obligations referenced in Section 5 shall survive any termination of this Agreement.

11. **Entire Agreement; Supersedes Previous Agreements**. This Agreement and the Retention Agreement contain the entire agreement and understanding of the parties hereto with respect to the matters covered herein and supersede all prior or contemporaneous negotiations, commitments, agreements and writings with respect to the subject matter hereof, including the Prior Agreement (except as set forth in Section 5 hereof).

12. **Notices**. Any notices or other communications provided for in this Agreement shall be sufficient if in writing. In the case of the Executive, such notices or communications shall be effectively delivered if hand-delivered to the Executive at his principal place of employment or if sent by registered or certified mail to the Executive at the last address on file with the Company. In the case of the Company, such notices or communications shall be effectively delivered if sent by registered or certified mail to the Company at its principal executive offices.

13. **Section 409A**. Notwithstanding anything to the contrary herein, to the extent required by Section 409A of the Internal Revenue Code of 1986, as amended ("**Section 409A**"), a termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of amounts upon or following a termination of employment unless such termination is also a "separation from service" within the meaning of Section 409A. For purposes of Section 409A, each payment made under this Agreement shall be designated as a "separate payment" within the meaning of Section 409A. Notwithstanding anything to the contrary herein, except to the extent any expense, reimbursement or in-kind benefit provided pursuant to this Agreement does not constitute a "deferral of compensation" within the meaning of Section 409A, (x) the amount of expenses eligible for reimbursement or in-kind benefits provided to the Executive during any calendar year will not affect the amount of expenses eligible for reimbursement or in-kind benefits provided to the Executive in any other calendar year, (y) the reimbursements of expenses for which the Executive is entitled to be reimbursed shall be made on or before the last day of the calendar year following the calendar year in which the applicable expense is incurred, and (z) the right to payment or reimbursement or in-kind benefits hereunder may not be liquidated or exchanged for any other benefit.

14. **Severability**. The parties have carefully reviewed the provisions of this Agreement and agree that they are fair and equitable. However, in light of the possibility of differing interpretations of law and changes in circumstances, the parties agree that if any one or more of the provisions of this Agreement shall be determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall, to the extent permitted by law, remain in full force and effect and shall in no way be affected, impaired or invalidated. Moreover, if any of the provisions contained in this Agreement are determined by a court of competent jurisdiction to be excessively broad as to duration, activity, geographic application or subject, it shall be construed, by limiting or reducing it to the extent legally permitted, so as to be enforceable to the extent compatible with then applicable law.

15. **Counterparts**. This Agreement may be executed by either of the parties hereto in counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

SOUTHCROSS ENERGY PARTNERS LLC

By: _____
Name:
Title:

JAMES W. SWENT III

_____

Exhibit E

Short-Term Incentive Performance Plan for 2019

In accordance with Section 7.2 of the *First Amended Chapter 11 Plan for Southcross Energy Partners, L.P. and Its Affiliated Debtors* [D.I. 816] (the "**Plan**"), (i) the Debtors and the Majority Ad Hoc Group have agreed to award all of the Debtors' full-time employees employed as of the Effective Date of the Plan (other than James W. Swent III, William C. Boyer, and Gregory L. Hood) their respective "target" amounts under the Short-Term Incentive Performance Plan for 2019 (the "**2019 STIP**") and (ii) the 2019 STIP amounts shall be paid on the Effective Date of the Plan.

Exhibit F

Implementation Memorandum

SOUTHCROSS ENERGY

In re Southcross Energy Partners, L.P., et al.

Case No. 19-10702 (MFW) (Jointly Administered)

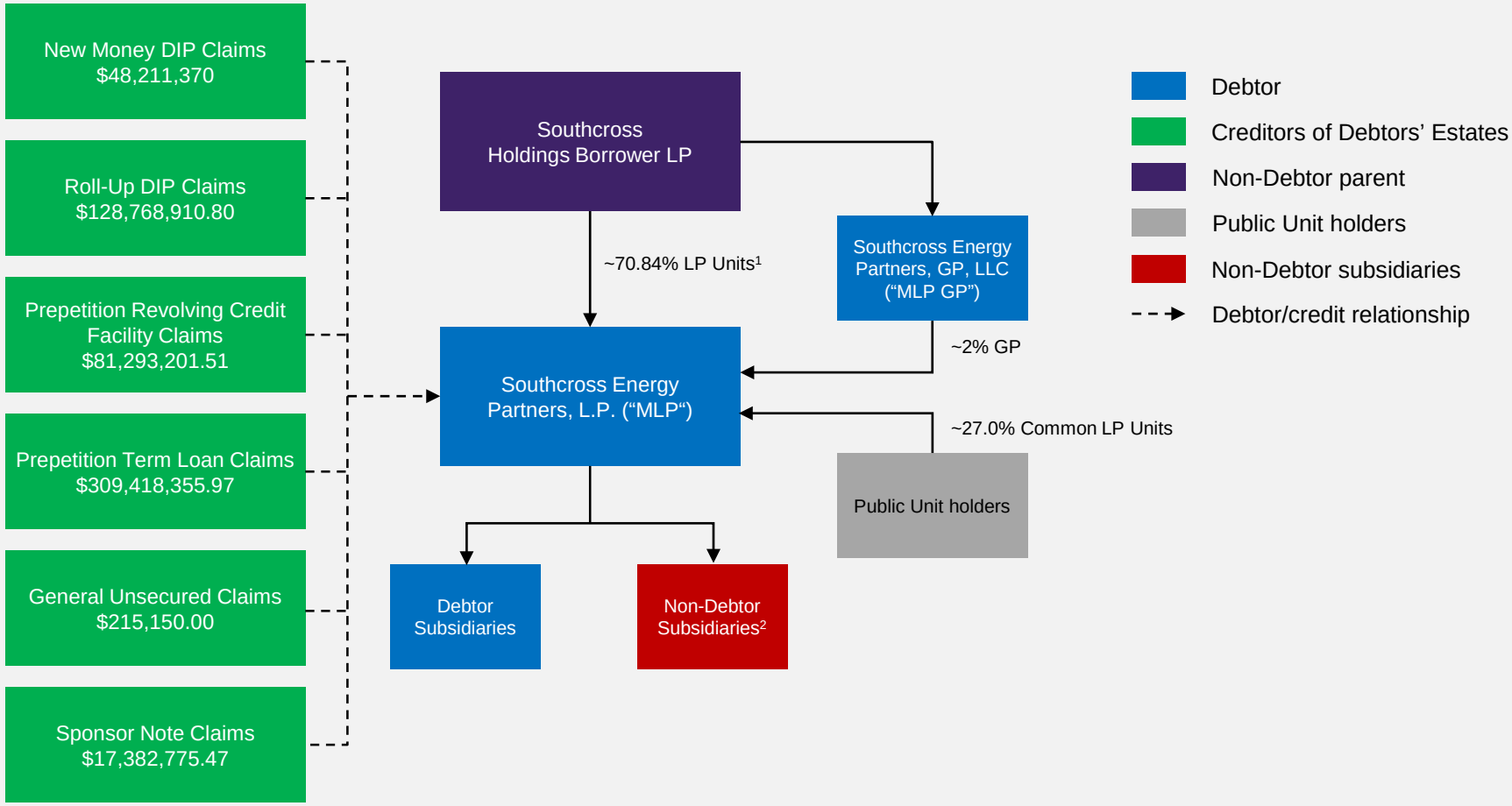
Implementation Memorandum

Introduction

This Implementation Memorandum provides an overview of the restructuring transaction and corresponding distributions set forth in the *First Amended Chapter 11 Plan for Southcross Energy Partners, L.P. and its Affiliated Debtors* [Dkt. No. 816] ("**Plan**"). Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Plan. Claim amounts are as of an assumed Effective Date of January 31, 2020. This Implementation Memorandum consists of four slides:

- Debtors' existing simplified organization structure
- Restructuring transaction summary and Plan distributions
- Overview of Credit Bid Transaction implementation
- Reorganized Debtors'/NewCo's simplified organization structure following restructuring transactions

Debtors' existing simplified organization structure

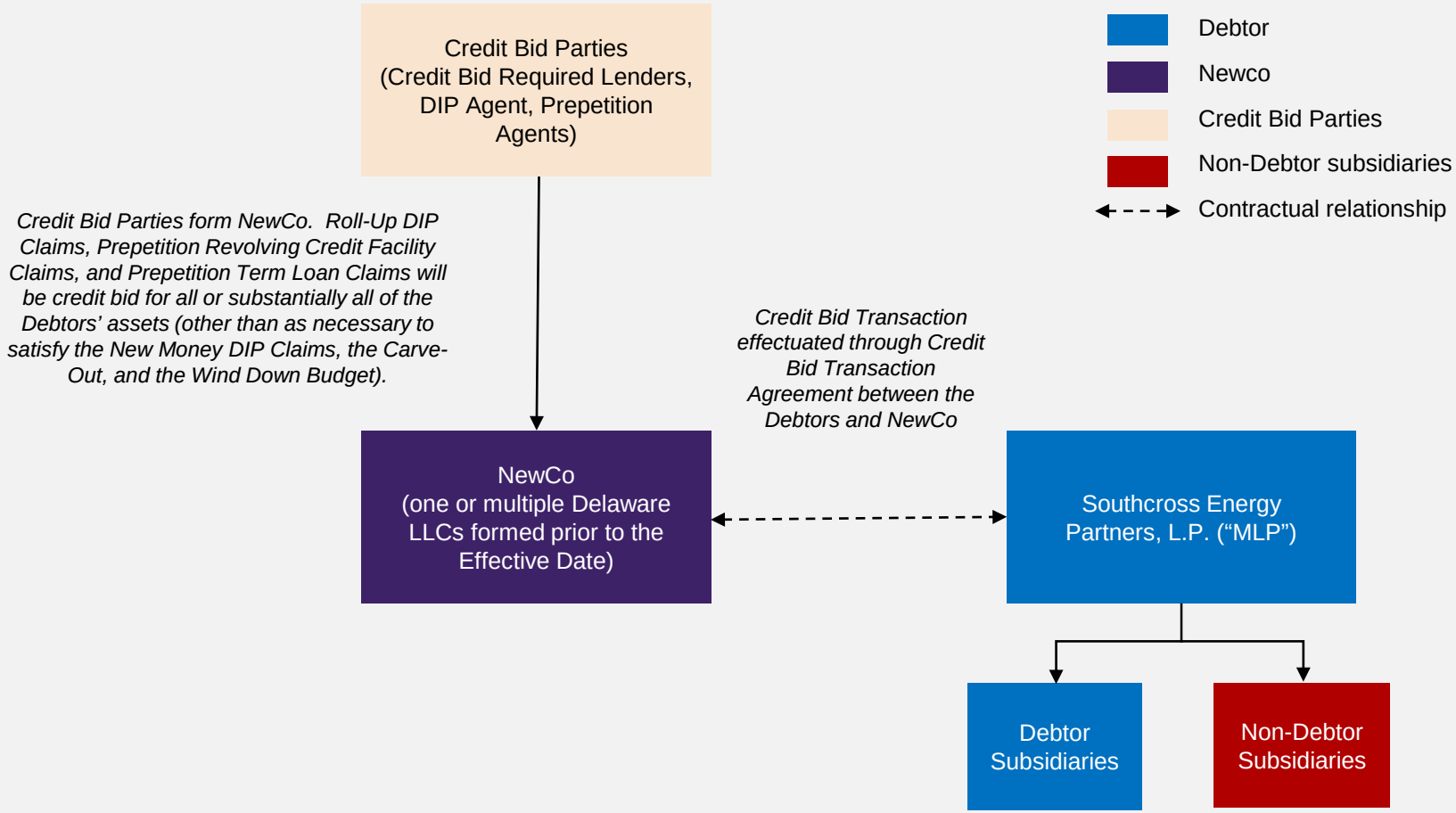


1. 23.61% Class B LP Units; 32.30% Common LP Units; 14.93% Subordinated LP Units. Unless otherwise noted, ownership interests are 100%.
2. Includes subsidiaries acquired by the Debtors pursuant to the *Order (I) Approving the Settlement by and Among Debtors and Southcross Holdings Entities and (II) Granting Related Relief* [Dkt. No. 503] as well as joint venture interests.

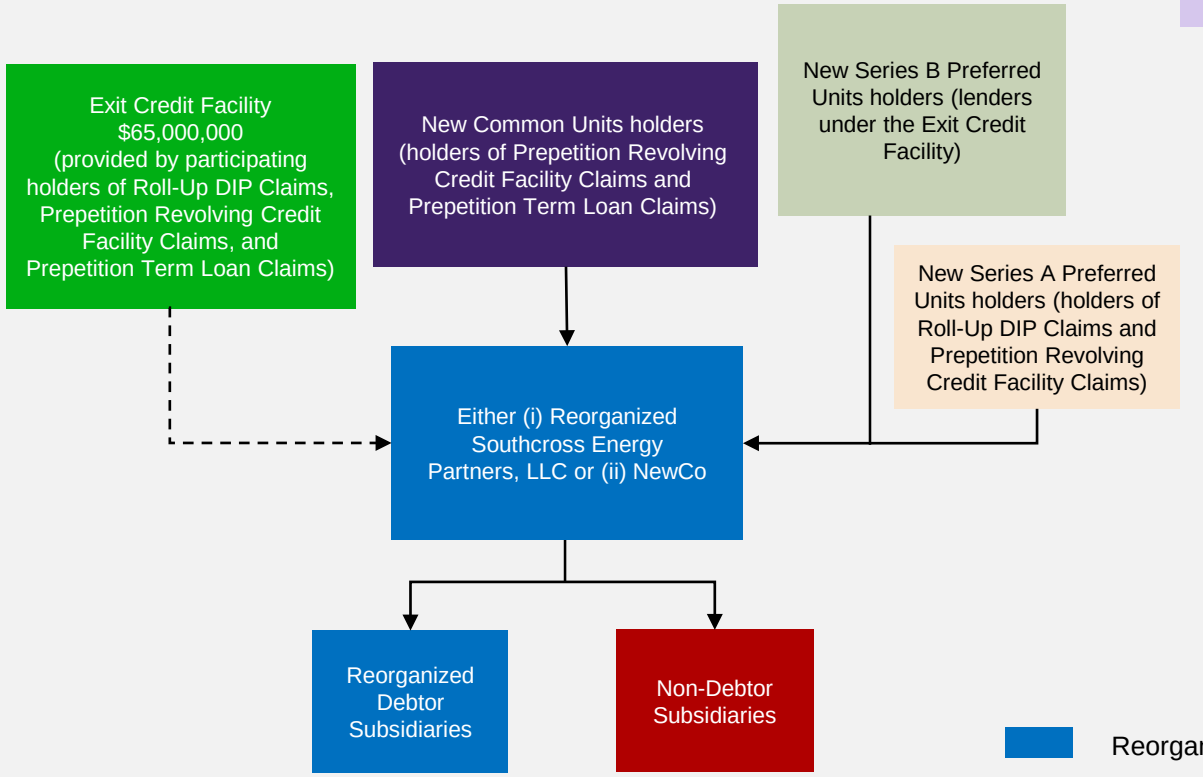
Restructuring transaction summary and Plan distributions

Classes of Claims / Interests	Distribution to class under the Plan
New Money DIP Claims	Paid in cash in full
Roll-Up DIP Claims	84.4% of the New Series A Preferred Units
Prepetition Revolving Credit Facility Claims	15.6% of New Series A Preferred Units and 15.6% of the New Common Units (subject to potential dilution from Management Incentive Plan)
Prepetition Term Loan Claims	84.4% of the New Common Units (subject to potential dilution from Management Incentive Plan)
General Unsecured Claims	No distribution
Sponsor Note Claims	No distribution
Existing Interests	No distribution / units cancelled
Debtor Entities	**Transaction Treatment**
Southcross Energy Partners, GP, LLC	Entity to be merged into an existing Debtor subsidiary on Effective Date
Southcross Energy Partners, L.P.	Entity to be converted into a Delaware LLC or to enter into transaction with NewCo pursuant to the Credit Bid Transaction on the Effective Date
Debtor Subsidiaries	Entities to be reorganized pursuant to the Plan or transferred to NewCo pursuant to the Credit Bid Transaction on Effective Date

Overview of Credit Bid Transaction implementation



Reorganized Debtors'/NewCo's simplified organization structure



Key Plan Effective Date Measures

- MLP GP merges into existing Debtor subsidiary
- MLP converted from an MLP into a Delaware LLC or assets transferred to NewCo
- New Common Units and New Series A Preferred Units are distributed in accordance with the Plan
- Reorganized Southcross Energy Partners, LLC/NewCo enters into Exit Revolving Credit Facility Agreement
- New Series B Preferred Units issued to parties funding the Exit Credit Facility that are entitled to an Upfront Payment, Oversubscription Payment, and/or Alternate Transaction Fee.

- Reorganized Debtor Entities
- New Lenders
- New Common Units holders
- New Series A Preferred Units holders
- New Series B Preferred Units holders
- Non-Debtor subsidiaries
- Debtor/creditor relationship

Exhibit G

Exit Credit Facility Agreement

EXIT FACILITY CREDIT AGREEMENT

dated as of [●], 2020 among

[Southcross Energy Partners LLC], [1]

as Borrower,

Wilmington Trust, National Association,

as Administrative Agent,

the Issuing Banks Party Hereto,

and

The Lenders Party Hereto

[1] If the Credit Bid Transaction (as defined in the Plan) is implemented, Borrower will be Newco.

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ANNEXES, EXHIBITS AND SCHEDULES

THIS EXIT FACILITY CREDIT AGREEMENT dated as of [●], 2020, is among: [Southcross Energy Partners LLC (f/k/a Southcross Energy Partners, L.P.)],[2] a Delaware limited liability company (the "**Borrower**"); each of the Lenders from time to time party hereto; and Wilmington Trust, National Association (in its individual capacity, "**Wilmington**"), as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, the "**Administrative Agent**").

R E C I T A L S

A. On April 1, 2019 (the "**Petition Date**"), Southcross Energy Partners, L.P., certain of its direct and indirect Subsidiaries and Southcross Energy Partners GP, LLC (collectively, the "**Debtors**") filed voluntary petitions (the "**Chapter 11 Cases**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") for relief under Title 11 of the United States Code entitled "Bankruptcy" (now and hereafter in effect, including any successor statute thereto, the "**Bankruptcy Code**").

B. The Debtors, Wilmington, as "DIP Agent" (in such capacity, the "**DIP Agent**"), and each of the financial institutions party thereto as lenders (the "**DIP Lenders**") are parties to that certain Senior Secured Superpriority Priming Debtor-in-Possession Credit Agreement, dated as of April 3, 2019 (as amended, restated, amended and restated, refinanced, replaced, supplemented or otherwise modified, the "**DIP Credit Agreement**"), pursuant to which the DIP Lenders provided certain loans and extensions of credit to the Borrower.

C. On [●], the Bankruptcy Court entered an order (the "**Confirmation Order**") confirming the Debtors' *First Amended Chapter 11 Plan for Southcross Energy Partners, L.P. and Its Affiliated Debtors* (as amended, supplemented or otherwise modified from time to time, the "**Chapter 11 Plan**"), which Confirmation Order, *inter alia*, authorized the Chapter 11 Emergence Transactions, including the Borrower's entry into and performance under this Agreement.

D. In consideration of the premises, the representations, warranties, covenants, and agreements contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and subject to the satisfaction of each condition precedent set forth in Section 6.01 hereof, the parties hereto further agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING MATTERS

Section 1.01 Certain Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"**ABR**", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

[2] If the Credit Bid Transaction is implemented, Newco.

"**Accredited Investor Certification**" means an "Accredited Investor Certification" substantially in the form attached to the *Notice of Amended Exit Financing Term Sheet*, filed in the Chapter 11 Cases on December 27, 2019, or such other form as reasonably acceptable to Willkie Farr & Gallagher LLP.

"**Ad Hoc Group**" has the meaning given to such term in the Chapter 11 Plan, as in effect on the Closing Date.

"**Adjusted LIBO Rate**" means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the LIBO Rate for such Interest Period multiplied by the Statutory Reserve Rate.

"**Administrative Agent"** has the meaning assigned to such term in the preamble to this Agreement.

"**Administrative Questionnaire**" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"**Affected Loans**" has the meaning assigned to such term in Section 5.05.

"**Affiliate**" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. None of the Administrative Agent, any Lender as of the Closing Date or any of their respective Affiliates shall be considered an Affiliate of the Borrower or any of its Subsidiaries.

"**Agreement**" means this Exit Facility Credit Agreement, as the same may from time to time be amended, restated, amended and restated, supplemented or otherwise modified.

"**All-In Yield**" means, as to any Indebtedness, the yield thereof, whether in the form of interest rate (or margin thereof), original issue discount, upfront fees, a Eurodollar rate or floor, an ABR rate or floor, or other fees paid ratably to all lenders of such Indebtedness, in each case, incurred or payable by the Loan Parties generally to all the lenders of such Indebtedness; *provided*, that (a) original issue discount and upfront fees shall be equated to interest rate assuming a 4-year life to maturity (or, if less, the stated life to maturity at the time of its incurrence of the applicable Indebtedness), and (b) "All-In Yield" shall not include arrangement fees, structuring fees, commitment fees, underwriting fees, success fees, ticking fees, consent or amendment fees and any similar fees (regardless of whether shared with, or paid to, in whole or in part, any or all lenders) and any other fees not paid ratably to all lenders of such Indebtedness.

"**Alternate Base Rate**" means, for any day, a rate per annum (rounded upward, if necessary, to the nearest $1/100^{th}$ of 1%) equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day *plus* 0.5% and (c) the Adjusted LIBO Rate for a one-month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) *plus* 1.0%. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate or the Adjusted LIBO Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in

accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) or (c), as applicable, of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively.

"**Alternate Cash Collateral**" means the cash collateral withdrawn from the Letter of Credit Account pursuant to Section 2.07(m).

"**Alternate Cash Collateral Limit**" means up to $15,000,000.

"**Annual Budget**" has the meaning assigned to such term in Section 8.01(c).

"**Anti-Terrorism Law**" has the meaning assigned to such term in Section 7.26(a).

"**Applicable Margin**" means, for any day (a) with respect to the Initial Term Loan, (i) with respect to any ABR Borrowing, 8.00%, and (ii) with respect to any Eurodollar Borrowing, 9.00%, (b) with respect to any Revolving Loan, (i) with respect to any ABR Borrowing, 8.00%, and (ii) with respect to any Eurodollar Borrowing, 9.00%, (c) with respect to any Incremental Term Loan, the rate per annum specified in the applicable Incremental Amendment, and (d) with respect to any Extended Term Loan, the rate per annum specified in the applicable Extension Amendment.

"**Approved Counterparty**" means (a) any Lender or any Affiliate of a Lender and (b) any other Person whose (or whose credit support provider's) long term senior unsecured debt rating is A-/A3 by S&P or Moody's (or their equivalent) or higher.

"**Approved Fund**" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"**Asset Sale**" means any sale, transfer, assignment, conveyance or other disposition by the Borrower or any Subsidiary to any Person (including by way of redemption by such Person) of any Property (including, without limitation, any capital stock or other securities of, or Equity Interests in, another Person), but excluding (a) dispositions resulting from Casualty Events, and (b) sales and other dispositions of Property pursuant to Sections 9.11(a)-(g), (h), (k) and (l).

"**Assignment and Assumption**" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 12.04(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit F-1 or any other form approved by the Administrative Agent (including electronic documentation generated by ClearPar, Markitclear or other electronic platform).

"**Bail-In Action**" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Bank Products**" means any of the following bank services: (a) commercial credit cards, (b) stored value cards, and (c) treasury or cash management services (including, without limitation, deposit accounts, funds transfers, automated clearinghouse services, auto-borrow services, zero balance accounts, returned check concentration, controlled disbursement services, lockboxes, account reconciliation and reporting service, trade finance services, overdraft protection, and interstate depository network services).

"**Bank Products Provider**" means any Lender or Affiliate of a Lender that provides Bank Products to the Borrower or any other Loan Party; provided that such Lender or Affiliate must have delivered a Secured Party Designation Notice to the Administrative Agent.

"**Bankruptcy Code**" has the meaning assigned to such term in the recitals to this Agreement.

"**Bankruptcy Court**" has the meaning assigned to such term in the recitals to this Agreement.

"**Board of Directors**" means, as to any person, the board of directors or managers or other governing body, as applicable, of such person (or, if such person is owned or managed by a single entity, the Board of Directors of such entity) or any duly authorized committee thereof.

"**Board of Governors**" means the Board of Governors of the Federal Reserve System of the United States of America or any successor Governmental Authority.

"**Borrower"** has the meaning assigned to such term in the preamble to this Agreement.

"**Borrower Financial Statements**" has the meaning assigned to such term in Section 7.04(a).

"**Borrower Materials**" has the meaning assigned to such term in Section 8.01.

"**Borrower Notice**" has the meaning assigned to such term in the definition of "Flood Zone Documentation".

"**Borrowing**" means Loans of the same Class and Type, made (or deemed made), converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

"**Breakage Costs**" has the meaning assigned to such term in Section 5.02.

"**Business Day**" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York or Dallas, Texas are authorized or required by law to remain closed; and if such day relates to a Borrowing or continuation of, a payment or

prepayment of principal of or interest on, or a conversion of or into, or the Interest Period for, a Eurodollar Loan or a notice by the Borrower with respect to any such Borrowing or continuation, payment, prepayment, conversion or Interest Period, any day which is also a day on which banks are open for dealings in Dollar deposits in the London interbank market.

"**Call Premium**" means, with respect to any Revolving Commitments permanently reduced or terminated or any Term Loans repaid or prepaid on any Repayment Date, the "Call Premium" specified below (expressed as a percentage of the principal amount of the Revolving Commitments or Term Loans so reduced, terminated, repaid or prepaid) opposite the "Redemption Date" period in which the Repayment Date occurs:

Repayment Date	Call Premium
On or prior to the first anniversary of the Closing Date	0.00%
After the first anniversary of the Closing Date and on or prior to the second anniversary of the Closing Date	1.25%
After the second anniversary of the Closing Date and on or prior to the third anniversary of the Closing Date	2.50%
After the third anniversary of the Closing Date and on or prior to the fourth anniversary of the Closing Date	3.75%
After the fourth anniversary of the Closing Date	5.00%

"**Capital Expenditures**" means, in respect of any Person, for any period, the aggregate (determined without duplication) of all expenditures and costs that are capitalized on the balance sheet of such Person in accordance with GAAP, exclusive of, with respect to each Loan Party, expenditures and costs incurred by such Loan Party to the extent that an unaffiliated third Person has provided such Loan Party with funds to pay such expenditures and costs prior to incurrence.

"**Capital Leases**" means, in respect of any Person, subject to Section 1.04(b), all leases which shall have been, or should have been, in accordance with GAAP, recorded as capitalized leases on the balance sheet of the Person liable (whether contingent or otherwise).

"**Cash Equivalents**" means Investments of the types described in Sections 9.05(c), (d), (e) and (f).

"**Casualty Event**" means any loss, casualty or other insured damage to, or any nationalization, seizure, confiscation, taking under power of eminent domain or by condemnation or similar proceeding, or the requisition of the use, of any Property of the Borrower or any of its Subsidiaries.

"**CCPN Sale**" has the meaning given to such term in the Chapter 11 Plan, as in effect of the Closing Date.

"**Change in Control**" means:

(a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof) of Equity Interests representing more than 50% on a diluted basis of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the Borrower; or

(b) except for transactions permitted by Section 9.10 or Section 9.11, the Borrower shall cease to beneficially own and control, directly or indirectly, all of the Equity Interests in each of the other Loan Parties;

provided that none of the Chapter 11 Emergence Transactions shall constitute, or be deemed to constitute, a Change in Control.

"**Change in Law**" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "**Change in Law**", regardless of the date enacted, adopted or issued.

"**Chapter 11 Cases**" has the meaning assigned to such term in the recitals to this Agreement.

"**Chapter 11 Emergence Transactions**" has the meaning assigned to such term in Section 1.05.

"**Chapter 11 Plan**" has the meaning assigned to such term in the recitals to this Agreement.

"**Class**" means, when used in reference (i) to any Commitment, whether such Commitment is a Revolving Commitment or Term Commitment and (ii) to any Loan or Borrowing, whether such Loan is, or such Borrowing is comprised of, Term Loans (including the

Initial Term Loan, any Incremental Term Loan or any Extended Term Loan, as the context may require) or Revolving Loans.

"**Closing Checklist**" the document appended hereto as Annex IV.

"**Closing Date**" means the date on which the conditions specified in Section 6.01 are satisfied (or waived in accordance with Section 12.02).

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

"**Collateral**" means any and all Property of the Loan Parties or any other Person that is secured by a Lien under one or more Security Instruments.

"**Commitment**" means, with respect to any Lender, individually or collectively, its Revolving Commitment or Term Loan Commitment, as the context requires. The aggregate Commitments with respect to all Lenders on the Closing Date shall be $65,000,000.

"**Confirmation Order**" has the meaning assigned to such term in the recitals to this Agreement.

"**Connection Income Taxes**" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"**Consolidated EBITDA**" means, with respect to the Borrower and its Subsidiaries for any period of determination, the sum of (without duplication, and without giving effect to any extraordinary losses or gains or any interest income during such period) the following determined on a consolidated basis: (a) Consolidated Net Income during such period *plus* (b) to the extent deducted in determining Consolidated Net Income in such period: (i) income tax expense, (ii) Consolidated Interest Expense, (iii) amortization (including amortization of equity compensation expenses), depreciation and all noncash charges during such period (but excluding any non-cash charge in respect of an item that was included in Consolidated Net Income in a prior period), (iv) non-recurring cash expenses for employee severance, employee relocation and employee hiring costs incurred during such period in an amount not to exceed, for any four (4) consecutive fiscal quarter period, (x) for any four (4) consecutive fiscal quarter period ending on or before December 31, 2020, $5,850,000.00, (y) for any four (4) consecutive fiscal quarter period ending March 31, 2021 or June 30, 2021, six and one half percent (6.5%) and (z) for any four (4) consecutive fiscal quarter period thereafter, five percent (5.0%) of Consolidated EBITDA (prior to giving effect to such addback) for such period in the aggregate during such period; *provided* that the Borrower provides line item detail with respect to any such expenses in the financial statements required to be delivered pursuant to Section 8.01(a) and 8.01(b) for the fiscal quarter in which such costs were incurred, (v) non-recurring cash costs in respect of reorganizations and accounting costs related thereto (including all fees and expenses paid to professionals in connection with the Chapter 11 Cases and the Transactions and costs associated with implementing the Chapter 11 Plan) during the applicable period in an amount not to exceed (x) with respect to fees and expenses paid to professionals in connection with the Chapter 11 Cases and the Transactions and costs associated with implementing the Chapter 11 Plan, $[_] in

the aggregate during any four (4) consecutive fiscal quarter period, and (y) with respect to all other such costs, $400,000 in the aggregate during any four (4) consecutive fiscal quarter period; *provided*, in each case, that the Borrower provides line item detail with respect to any such costs in the financial statements required to be delivered pursuant to Section 8.01(a) and 8.01(b) for the fiscal quarter in which such costs were incurred, (vi) any non-cash loss on dispositions of assets, (vii) any non-recurring operating expenses related to Chapter 11 Emergence Transactions relating to the closing, mothballing or shutting-in of any facilities and (viii) any fees or expenses incurred in connection with seeking or obtaining a rating of the Loans; *provided, further*, that if the Borrower or any Consolidated Subsidiary shall acquire or dispose of any Property during such period, then Consolidated EBITDA shall be calculated after giving *pro forma* effect to such acquisition or disposition, as if such acquisition or disposition had occurred on the first day of such period, *minus* (c) any non-recurring gains.

"**Consolidated Interest Expense**" means, for any period of determination, the sum (determined without duplication) of the aggregate net interest expense of the Borrower and the Consolidated Subsidiaries for such period (net of intercompany interest income and interest expense among the Borrower and its Consolidated Subsidiaries and net of any other interest income) as determined in accordance with GAAP, including: (a) amortization of debt discount, (b) capitalized interest, (c) expenses directly related to the extinguishment of debt and (d) the portion of any payments or accruals under Capital Leases allocable to interest expense, *plus* the portion of any payments or accruals under Synthetic Leases allocable to interest expense whether or not the same constitutes interest expense under GAAP.

"**Consolidated Net Income**" means, for any period of determination, the aggregate of the net income (or loss) of the Borrower and the Consolidated Subsidiaries after allowances for taxes for such period determined on a consolidated basis in accordance with GAAP; *provided* that there shall be excluded from such net income (to the extent otherwise included therein) the following: (a) the net income of any Person, other than a Loan Party, in which the Borrower or any Consolidated Subsidiary has an interest, except to the extent of the amount of dividends or distributions actually paid in cash during such period by such other Person to the Borrower or to a Consolidated Subsidiary, as the case may be; (b) the net income (but not loss) during such period of any Consolidated Subsidiary to the extent that the declaration or payment of dividends or similar distributions or transfers or loans by that Consolidated Subsidiary is not at the time permitted by operation of the terms of its charter or any agreement, instrument or Governmental Requirement applicable to such Consolidated Subsidiary or is otherwise restricted or prohibited, in each case determined in accordance with GAAP; (c) the net income (or loss) of any Person acquired in a pooling-of-interests transaction for any period prior to the date of such transaction; (d) any extraordinary non-cash gains or losses during such period, (e) any gains or losses attributable to writeups or writedowns of assets and (f) any non-cash gains or losses resulting from the requirements of ASC 815; *provided*, *further*, that if the Borrower or any Consolidated Subsidiary shall acquire or dispose of any Property during such period, then Consolidated Net Income shall be calculated, which calculation shall be in form and substance satisfactory to the Required Lenders, after giving *pro forma* effect to such acquisition or disposition, as if such acquisition or disposition had occurred on the first day of such period.

"**Consolidated Subsidiaries**" means each Subsidiary of the Borrower (whether now existing or hereafter created or acquired) the financial statements of which shall be (or should have been) consolidated with the financial statements of the Borrower in accordance with GAAP.

"**Consolidated Total Indebtedness**" means, as of any date of determination, an amount equal to the aggregate amount of all outstanding Indebtedness of Borrower and its Subsidiaries of the type described in clauses (a), (b), (c), (d) and (e) of the definition of Indebtedness; *provided* that (i) Indebtedness under any revolving or working capital facility (including, without limitation, the Revolving Facility) shall be calculated as if such facility were fully drawn (for the avoidance of doubt, without giving effect to the application or netting of any proceeds thereof) and (ii) the amount of Indebtedness in respect of letters of credit (including, without limitation, the Letters of Credit) shall only be included if drawn and unreimbursed for a period of more than three (3) Business Days.

"**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "**Controlling**" and "**Controlled**" have meanings correlative thereto.

"**Credit Bid Transaction**" has the meaning given to such term in the Plan (whether such transaction is pursuant to section 363, 1123 or any other provision of Bankruptcy Code).

"**Credit Event**" has the meaning assigned to such term in Section 6.02.

"**Debt Incurrence**" means the incurrence by the Borrower or any of its Subsidiaries after the Closing Date of any Indebtedness other than Indebtedness permitted under Section 9.02.

"**Debt Representative**" means, with respect to any Indebtedness that is secured on a junior basis to the Loans, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

"**Debtor**" has the meaning assigned to such term in the recitals to this Agreement.

"**Default**" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"**Defaulting Lender**" means any Lender that has (a) failed to pay over to the Administrative Agent or any other Lender any amount required to be paid by it hereunder within three (3) Business Days of the date when due, unless the subject of a good faith dispute, or (b) (i) become or is insolvent or has a parent company that has become or is insolvent or (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment;

provided that a Lender shall not become a Defaulting Lender solely as a result of the acquisition or maintenance of an ownership interest in such Lender or Person controlling such Lender or the exercise of control over a Lender or Person controlling such Lender by a Governmental Authority or an instrumentality thereof.

"**Designee Members**" means, collectively, any "Tier 1 Manager" and "Tier 2 Manager", each as defined in the LLC Agreement.

"**DIP Agent**" has the meaning assigned to such term in the recitals to this Agreement.

"**DIP Credit Agreement**" has the meaning assigned to such term in the recitals to this Agreement.

"**DIP Lenders**" has the meaning assigned to such term in the recitals to this Agreement.

"**DIP Payoff Letter**" means that certain Payoff Letter, dated as of [____], 2020, by and among "DIP Agent", the Rollover Lenders, in their capacity as DIP Lenders, and the Debtors.

"**Disclosure Statement Supplement Exhibits**" has the meaning assigned to such term in Section 7.04(a).

"**Disqualified Capital Stock**" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event, matures or is mandatorily redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is convertible or exchangeable for Indebtedness or redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock) at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the earlier of (a) the latest Maturity Date in effect at the date of issuance of such Equity Interest, and (b) the date on which there are no Loans or other obligations hereunder outstanding; *provided* that notwithstanding anything to the contrary herein, in no event shall the New Preferred Units be considered "Disqualified Capital Stock".

"**Dollars**" or "**$**" refers to lawful money of the United States of America.

"**Domestic Subsidiary**" means any Subsidiary that is organized under the laws of the United States of America or any state thereof or the District of Columbia.

"**EEA Financial Institution**" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Investor**" means a Person who is an "accredited investor" within the meaning of the Securities Act of 1933, as amended, and the rules promulgated thereunder and who has delivered a completed and duly executed Accredited Investor Certification to Willkie Farr & Gallagher LLP on or prior to the Closing Date.

"**Embargoed Person**" has the meaning assigned to such term in Section 9.22.

"**Environmental Laws**" means any and all Governmental Requirements pertaining in any way to the environment, the preservation or reclamation of natural resources, or the management, Release or threatened Release of any Hazardous Materials, in effect in any and all jurisdictions in which the Borrower or any Subsidiary is conducting, or at any time has conducted, business, or where any Property of the Borrower or any Subsidiary is located, including, the Oil Pollution Act of 1990 ("**OPA**"), as amended, the Clean Air Act, as amended, the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 ("**CERCLA**"), as amended, the Federal Water Pollution Control Act, as amended, the Occupational Safety and Health Act of 1970, as amended, the Resource Conservation and Recovery Act of 1976 ("**RCRA**"), as amended, the Safe Drinking Water Act, as amended, the Toxic Substances Control Act, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Hazardous Materials Transportation Act, as amended, and other environmental conservation or protection Governmental Requirements.

"**Environmental Permit**" means any permit, registration, license, notice, approval, consent, exemption, variance, spill or response plan, or other authorization required under or issued pursuant to applicable Environmental Laws.

"**Equity Interests**" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such Equity Interests.

"**Equity Issuance**" means any issuance or sale by the Borrower after the Closing Date of any of the following, in each case, in respect of the Borrower: (i) any Equity Interests, (ii) any warrants or options exercisable in respect of its Equity Interests (other than any warrants or options issued to directors, officers, or employees of the Borrower or any of its Subsidiaries pursuant to employee benefit plans established in the ordinary course of business and any capital stock of the Borrower issued upon the exercise of such warrants or options) or (iii) any other security or instrument representing an Equity Interest (or the right to obtain any Equity Interests).

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute.

"**ERISA Affiliate**" means each trade or business (whether or not incorporated) which together with the Borrower or a Subsidiary would be deemed to be a "**single employer**" within

the meaning of section 4001(b)(1) of ERISA or subsections (b), (c), (m) or (o) of section 414 of the Code.

"**ERISA Event**" means (a) a "**Reportable Event**" described in section 4043 of ERISA and the regulations issued thereunder, (b) the withdrawal of the Borrower, a Subsidiary or any ERISA Affiliate from a Plan during a plan year in which it was a "**substantial employer**" as defined in section 4001(a)(2) of ERISA, (c) the filing of a notice of intent to terminate a Plan or the treatment of a Plan amendment as a termination under section 4041 of ERISA, (d) the institution of proceedings to terminate a Plan by the PBGC, (e) receipt of a notice of withdrawal liability pursuant to section 4202 of ERISA or (f) any other event or condition which could reasonably be expected to constitute grounds under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan.

"**Eurodollar**", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

"**Event of Default**" has the meaning assigned to such term in Section 10.01.

"**Excepted Liens**" means: (a) Liens for Taxes, assessments or other governmental charges or levies which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (b) Liens in connection with workers' compensation, unemployment insurance or other social security, old age pension or public liability obligations which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (c) statutory landlord's liens, operators', interest owners', vendors', carriers', warehousemen's, repairmen's, mechanics', suppliers', workers', materialmen's, construction or other like Liens, in each case, arising by operation of law in the ordinary course of business or incident to the operation and maintenance of Properties each of which is in respect of obligations that are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (d) Liens arising solely by virtue of customary deposit account agreements with the creditor depositary institution or any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies and burdening only deposit accounts or other funds maintained with a creditor depository institution, provided that no such deposit account is a dedicated cash collateral account or is subject to restrictions against access by the depositor in excess of those set forth by regulations promulgated by the Board of Governors and no such deposit account is intended by the Borrower or any of its Subsidiaries to provide collateral to the depository institution or any other Person (other than the Secured Parties pursuant to the Security Instruments); (e) zoning and land use requirements, easements, restrictions, servitudes, permits, conditions, covenants, exceptions or reservations affecting, and minor irregularities or deficiencies in title to, any real Property of the Borrower or any Subsidiary that do not secure Indebtedness and which in the aggregate do not materially impair the use of such Property for the purposes of which such Property is held by the Borrower or any Subsidiary or materially impair the value of such Property subject thereto; (f) Liens on cash or securities pledged to secure performance of tenders, surety, appeal and supersedeas bonds, government contracts, performance and return of money bonds, bids, trade contracts, leases,

statutory obligations, regulatory obligations, obligations in respect of workers' compensation, unemployment insurance or other forms of government benefits or insurance and other obligations of a like nature incurred in the ordinary course of business; (g) Liens, titles and interests of lessors of Property leased by such lessors to the Borrower or any Subsidiary, restrictions and prohibitions on encumbrances and transferability with respect to such Property and the Borrower's or such Subsidiary's interests therein imposed by such leases, and Liens and encumbrances encumbering such lessors' titles and interests in such Property and to which the Borrower's or such Subsidiary's leasehold interests may be subject or subordinate, in each case, whether or not evidenced by UCC financing statement filings or other documents of record; provided that such Liens do not secure Indebtedness of the Borrower or any Subsidiary and do not encumber Property of the Borrower or any Subsidiary other than the Property that is the subject of such leases; (h) non-exclusive licenses or sublicenses granted in the ordinary course of business which do not materially interfere with the businesses of Borrower or its Subsidiaries; and (i) judgment and attachment Liens not giving rise to an Event of Default, provided that any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceeding may be initiated shall not have expired and no action to enforce such Lien has been commenced. Any Lien described in clauses (a) through (d) shall remain an "**Excepted Lien**" only for so long as (A) the appropriate Loan Party shall cause any proceeding instituted contesting such Lien to stay the sale or forfeiture of any portion of the Collateral on account of such Lien, (B) the appropriate Loan Party shall maintain adequate reserves related to such Lien to the extent required by GAAP, and (C) such Lien shall in all respects be subject and subordinate in priority to the Liens created and evidenced by the Security Instruments, except if and to the extent that the Governmental Requirements creating, permitting or authorizing such Lien provides that such Lien is or must be superior to the Liens created and evidenced by the Security Instruments; *provided* that no intention to subordinate the Liens granted in favor of the Administrative Agent for the benefit of the Secured Parties pursuant to the Security Instruments is to be hereby implied or expressed by the permitted existence of such Excepted Liens.

"**Excess Cash Balance**" means, as of any date of determination, the amount by which (a) the difference between (x) Unrestricted Cash (other than Excluded Funds, in each case, without duplication of the amounts in clause (y)) *minus* (y) the sum of (i) the amount of projected Non-Growth Cap-Ex for the immediately succeeding six (6) month period set forth in the Annual Budget most recently delivered in accordance with Section 8.01(c) *(provided* that, for any month for which Non-Growth Cap-Ex is not set forth in the Annual Budget on a monthly basis, Non-Growth Cap-Ex for such month shall be calculated by prorating the amount of Non-Growth Cap-Ex for the annual (or other) period containing such month) *plus* (ii) scheduled payments of interest in cash by the Borrower in respect of the Loans (based on the Loans outstanding as of such date) for the immediately succeeding six (6) month period *plus* (iii) solely with respect to the Semi-Annual ECP with respect to the last Business Day of December of any fiscal year, the amount of payments estimated to be made by the Borrower in cash (as determined in good faith by the Borrower) on account of real property tax liabilities of the Borrower and its Subsidiaries during the immediately succeeding six (6) month period, exceeds (b) $10,000,000.

"**Excluded Accounts**" means (i) accounts used solely as a payroll account, trust account, employee benefit account or tax withholding account and (ii) accounts in which the amount on deposit does not exceed $200,000 in any one account and $400,000 in all such accounts.

"**Excluded Funds**" means the sum of (i) the amount of any checks issued, wires initiated or ACH transfers initiated that have not yet cleared or been completed and (ii) cash and Cash Equivalents held in accounts designated and used solely for payroll or employee benefits.

"**Excluded Hedging Obligation**" means, with respect to any Loan Party, individually determined on a Loan Party by Loan Party basis, any Indebtedness in respect of any Hedging Agreement if, and solely to the extent that, all or a portion of the guarantee by such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Indebtedness in respect of any Hedging Agreement (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an "**eligible contract participant**" as defined in the Commodity Exchange Act at the time such guarantee or grant of a security interest becomes effective with respect to such related Indebtedness in respect of any Hedging Agreement. If any Indebtedness in respect of any Hedging Agreement arises under a master agreement governing more than one transaction or confirmation, such exclusion shall apply only to the portion of such Indebtedness in respect of any Hedging Agreement that is attributable to transactions or confirmations for which such guarantee or security interest is or becomes illegal.

"**Excluded Taxes**" means, with respect to the Administrative Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of the Borrower or any Guarantor hereunder or under any other Loan Document, (a) Taxes (i) imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income Taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, or (ii) that are Other Connection Taxes, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Borrower or any Guarantor is located, (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 5.04(b)), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 5.03(f), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts with respect to such withholding tax pursuant to Section 5.03(a) or Section 5.03(c), and (d) any United States federal withholding taxes imposed by FATCA.

"**Executive Order**" has the meaning assigned to such term in Section 7.26(a).

["**Existing Letters of Credit**" means, collectively, the "Letters of Credit" as defined in the and issued under the DIP Credit Agreement which, as of the Closing Date, are issued and undrawn, and which are listed on Schedule 1.01(b).]

"**Existing Maturity Date**" has the meaning assigned to such term in Section 2.08(a).

"**Existing Term Loan Tranche**" has the meaning assigned to such term in Section 2.08(a).

"**Exit Credit Facilities**" means, collectively, the Term Facility and the Revolving Facility.

"**Extended Maturity Date**" has the meaning assigned to such term in Section 2.08(c).

"**Extended Term Loans**" has the meaning assigned to such term in Section 2.08(a).

"**Extending Lenders**" has the meaning assigned to such term in Section 2.08(c).

"**Extension Amendment**" has the meaning assigned to such term in Section 2.08(g).

"**Extension Effective Date**" has the meaning assigned to such term in Section 2.08(c).

"**Extension Request**" has the meaning assigned to such term in Section 2.08(a).

"**Extraordinary Receipt**" means Net Cash Proceeds received by or paid to or for the account of Borrower or its Subsidiaries not in the ordinary course of business, including, tax refunds, pension plan reversions, proceeds of insurance not consisting of proceeds described in Section 3.04(b)(iii), judgments, proceeds of settlements, condemnation awards (and payments in lieu thereof), indemnity payments, and any purchase price adjustments.

"**FATCA**" means sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any regulations or official interpretations thereof.

"**FCPA**" means the Foreign Corrupt Practices Act of 1977, as amended.

"**Federal Flood Insurance**" means federally backed Flood Insurance available under the National Flood Insurance Program to owners of real property improvements located in special flood hazard area in a community participating in the National Flood Insurance Program.

"**Federal Funds Effective Rate**" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"**Fee Letter**" means that certain Fee Letter, by and between the Borrower and the Administrative Agent, dated as of the Closing Date, as may be amended, restated, supplemented or otherwise modified from time to time.

"**FEMA**" means the Federal Emergency Management Agency, an agency of the United States Department of Homeland Security that administers the National Flood Insurance Program.

"**Final DIP Order**" has the meaning assigned to such term in the Chapter 11 Plan.

"**Financial Officer**" means, for any Person, the chief financial officer, principal accounting officer, treasurer or controller of such Person. Unless otherwise specified, all references herein to a Financial Officer means a Financial Officer of the Borrower.

"**Flood Insurance**" means, for any owned real Property improved by a Building or Manufactured (Mobile) Home (each as defined in the applicable Flood Insurance Regulations) located in a special flood hazard area, Federal Flood Insurance or private insurance that meets or exceeds the requirements set forth by FEMA in its Mandatory Purchase of Flood Insurance Guidelines. Flood Insurance shall be in commercially reasonable amounts at least up to the maximum policy limits set under the National Flood Insurance Program.

"**Flood Insurance Regulations**" means (a) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (b) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (c) the National Flood Insurance Reform Act of 1994 (amending 42 USC § 4001, et seq.), as the same may be amended or recodified from time to time, and (d) the Flood Insurance Reform Act of 2004 and any regulations promulgated thereunder.

"**Flood Zone Documentation**" means with respect to any fee interest in any real Property improved by a Building or Manufactured (Mobile) Home (each as defined in the applicable Flood Regulations) located in the United States of any Loan Party, to the extent required to comply with Flood Insurance Regulations: (1) a completed standard flood hazard determination form, (2) if the real Property is located in a special flood hazard area, a notification to the applicable Loan Party ("**Borrower Notice**") and, if applicable, notification to such Loan Party that flood insurance coverage under the National Flood Insurance Program is not available because the community does not participate in the National Flood Insurance Program, (3) documentation evidencing the applicable Loan Party's receipt of the Borrower Notice and (4) if the Borrower Notice is required to be given and flood insurance is available in the community in which the real Property is located, evidence of Flood Insurance.

"**Foreign Lender**" means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

"**Fund**" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"**GAAP**" means generally accepted accounting principles in the United States of America as in effect from time to time subject to the terms and conditions set forth in Section 1.04.

"**Gathering System**" means the Midstream Properties of the Borrower and its Subsidiaries comprised of any pipeline or gathering system owned or leased from time to time by Borrower any of its Subsidiaries that are used in the business of Borrower and such Subsidiaries.

"**Governmental Authority**" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supranational bodies, such as the European Union or the European Central Bank).

"**Governmental Requirement**" means any law, statute, code, ordinance, order, determination, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, rules of common law, authorization or other directive or requirement, whether now or hereinafter in effect, of any Governmental Authority.

"**Guarantors**" means, collectively, (a) the Subsidiaries listed on Schedule 7.14, and (b) each other Subsidiary that guarantees the Secured Obligations pursuant to Section 8.14(a).

"**Guaranty and Collateral Agreement**" means a Guaranty and Collateral Agreement executed by the Borrower and the Guarantors in substantially the form of Exhibit E granting and confirming security interests in certain Collateral and unconditionally guarantying on a joint and several basis, payment of the Secured Obligations, as the same may be amended, modified or supplemented from time to time.

"**Hazardous Material**" means any substance regulated or as to which liability might arise under any applicable Environmental Law including: (a) any chemical, compound, material, product, byproduct, substance or waste defined as or included in the definition or meaning of "hazardous substance," "hazardous material," "hazardous waste," "solid waste," "toxic waste," "extremely hazardous substance," "toxic substance," "contaminant," "pollutant," or words of similar meaning or import found in any applicable Environmental Law; (b) Hydrocarbons, petroleum products, petroleum substances, natural gas, oil, oil and gas waste, crude oil, and any components, fractions, or derivatives thereof; and (c) radioactive materials, explosives, asbestos or asbestos containing materials, polychlorinated biphenyls, radon, infectious or medical wastes.

"**Hedging Agreement**" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement, whether exchange traded, "**over-the-counter**" or otherwise, involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions (including any agreement, contract or transaction that constitutes a "**swap**" within the meaning of section 1a(47) of the Commodity Exchange Act); provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, or consultants of the Borrower or the Subsidiaries shall be a Hedging Agreement.

"**Hedging Termination Value**" means, in respect of any one or more Hedging Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Agreements, (a) for any date on or after the date such Hedging Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Agreements, as determined by the counterparties to such Hedging Agreements.

"**Highest Lawful Rate**" means, with respect to each Lender, the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Loans or on other Secured Obligations under laws applicable to such Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws allow as of the date hereof.

"**Hydrocarbons**" means oil, gas, casinghead gas, drip gasoline, natural gasoline, condensate, distillate, liquid hydrocarbons, gaseous hydrocarbons and all products refined or separated therefrom.

"Incremental Amendment" means an amendment to this Agreement, in form and substance reasonably satisfactory to the Administrative Agent (acting at the direction of the Required Lenders), that is entered into among the Borrower, the Administrative Agent and any applicable Incremental Term Lenders in connection with the incurrence of Incremental Term Loans in accordance with Section 2.05.

"**Incremental Request"** means a written request for an Incremental Term Facility substantially in the form of Exhibit B-2.

"**Incremental Term Borrowing**" means a Borrowing of Incremental Term Loans.

"**Incremental Term Commitment**" means, with respect to each Lender, the commitment, if any, of such Lender to make Incremental Term Loans hereunder to the Borrower in accordance with Section 2.05 in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name in the applicable Incremental Amendment, as such amount may be (a) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to an Assignment and Assumption or (b) otherwise reduced, increased or modified from time to time pursuant to the terms hereof. The initial amount of each Lender's Incremental Term Commitment shall be set forth in the Incremental Amendment or in the Assignment and Assumption pursuant to which such Lender shall have assumed an Incremental Term Commitment, as the case may be. For the avoidance of doubt, no Incremental Term Commitment exists as of the Closing Date and the maximum aggregate Incremental Term Commitment that may exist at any time is $15,000,000.

"**Incremental Term Facility**" means a credit facility consisting of the Incremental Term Commitments and the Incremental Term Loans advanced thereunder.

"**Incremental Term Lender**" means a Lender with an Incremental Term Commitment or an outstanding Incremental Term Loan.

"**Incremental Term Loan**" means the extensions of credit made by the Incremental Term Lenders to the Borrower pursuant to Section 2.05.

"**Indebtedness**" means, for any Person, the sum of the following (without duplication): (a) all obligations of such Person for borrowed money or evidenced by bonds, bankers' acceptances, debentures, notes or other similar instruments; (b) all obligations of such Person (whether contingent or otherwise) in respect of letters of credit, surety or other bonds and similar instruments; (c) all accounts payable and all accrued expenses, liabilities or other obligations of such Person to pay the deferred purchase price of Property or services, except (i) trade accounts payable of such Person arising in the ordinary course of business if and to the extent that such trade accounts payable are not past due by more than ninety (90) days or that are being contested in good faith by appropriate proceedings diligently pursued and for which adequate reserves have been established or are subject to an offset in favor of such Person as a result of accounts receivable owed to such Person, and (ii) non-cash purchase price adjustments or non-cash earnouts and the portion of any cash purchase price adjustments or cash earnouts that is not determinable; (d) all obligations under Capital Leases; (e) all obligations under Synthetic Leases; (f) all Indebtedness (as defined in the other clauses of this definition) of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien on any Property of such Person, whether or not such Indebtedness is assumed by such Person, provided, however, that the amount of such Indebtedness of any Person described in this clause (f) shall, for purposes of this Agreement, be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness or (ii) the fair market value of the Property encumbered; (g) all Indebtedness (as defined in the other clauses of this definition) of others guaranteed by such Person or in which such Person otherwise assures a creditor against loss of the Indebtedness (howsoever such assurance shall be made) to the extent of the lesser of the amount of such Indebtedness and the maximum stated amount of such guarantee or assurance against loss; (h) all obligations or undertakings of such Person to maintain or cause to be maintained the financial position or covenants of others or to purchase the Indebtedness or Property of others; (i) obligations to pay for electricity, natural gas, other Hydrocarbons and other commodities under contracts having an initial term in excess of one (1) year even if such electricity, natural gas, other Hydrocarbons, and other commodities are not actually taken, received or utilized by such Person; (j) any Indebtedness of a partnership for which such Person is liable either by agreement, by operation of law or by a Governmental Requirement but only to the extent of such liability; and (k) Disqualified Capital Stock.

"**Indemnified Taxes**" means Taxes other than Excluded Taxes.

"**Indemnitee**" has the meaning assigned to such term in Section 12.03(b).

"**Information**" has the meaning assigned to such term in Section 12.11.

"**Initial Exit Lender**" means any Lender identified as an Initial Exit Lender on Annex I (under the heading "Initial Exit Lender").

"**Initial Term Commitment**" means, with respect to each Lender, the commitment, if any, of such Lender to make Initial Term Loans hereunder to the Borrower on the Closing Date in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name

under the heading "Initial Term Commitment" on Annex I hereto, as such amount may be (a) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to an Assignment and Assumption or (b) otherwise reduced, increased or modified from time to time pursuant to the terms hereof. The initial amount of each Lender's Initial Term Commitment is set forth on Annex I hereto (under the heading "Initial Term Commitment") or in the Assignment and Assumption pursuant to which such Lender shall have assumed an Initial Term Commitment, as the case may be. As of the Closing Date, the aggregate amount of all Initial Term Commitments is $35,000,000.

"**Initial Term Facility**" means the credit facility consisting of the Initial Term Commitments and the Initial Term Loans advanced thereunder.

"**Initial Term Lender**" means a Lender with an Initial Term Commitment or an outstanding Initial Term Loan.

"**Initial Term Loan**" means the extensions of credit made by the Initial Term Lenders to the Borrower on the Closing Date pursuant to Section 2.01(b).

"**Intellectual Property**" shall have the meaning assigned to such term in Section 7.16(d).

"**Interest Election Request**" means a written request by the Borrower to convert or continue a Borrowing in accordance with Section 2.04, substantially in the form of Exhibit C.

"**Interest Payment Date**" means (a) with respect to any ABR Loan, the last Business Day of each March, June, September and December and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period.

"**Interest Period**" means with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter, as the Borrower may elect in its applicable Notice of Borrowing or Interest Election Request; provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (b) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"**Investment**" means, for any Person: (a) the acquisition (whether for cash, Property, services or securities or otherwise) of Equity Interests of any other Person (including, without limitation, any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such short sale); (b) the making of any deposit with, or

advance, loan or capital contribution to, assumption of Indebtedness of, purchase or other acquisition of any other Indebtedness or equity participation or interest in, or other extension of credit to, any other Person (including the purchase of Property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such Property to such Person, but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days representing the purchase price of inventory or supplies sold by such Person in the ordinary course of business); (c) the purchase or acquisition (in one or a series of transactions) of Property of another Person that constitutes a business unit or (d) the entering into of any guarantee of, or other contingent obligation (including the deposit of any Equity Interests to be sold) with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person.

"**IRS**" means the United States Internal Revenue Service.

"**ISP**" means, with respect to any Letter of Credit, the "International Standby Practices" published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

"**Issuing Banks**" means, individually or collectively as the context requires, each of [●], in their respective capacities as issuers of Letters of Credit hereunder [(but limited, in the case of [●], to Existing Letters of Credit deemed issued hereunder (and all amendments, replacements and extensions thereof))], their respective successors in such capacity as provided in Section 2.07(i), and, if requested by the Borrower and consented to by the Administrative Agent (acting at the direction of the Required Lenders), any other Person who accepts such appointment and executes a joinder to this Agreement, in form and substance reasonably satisfactory to the Borrower and the Administrative Agent, to act as an Issuing Bank under this Agreement. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"**LC Availability Period**" means the period commencing on the Closing Date to but excluding the date that is five (5) Business Days prior to the LC Maturity Date.

"**LC Cash Collateralization Amount**" means an amount equal to [103.0]% multiplied by the amount of all LC Exposures existing at such time.

"**LC Commitment**" means, with respect to each Issuing Bank, the LC Commitment of such Issuing Bank as set forth in Annex II hereto (under the heading "LC Commitments") as of the date hereof, as such amount may be reduced or otherwise modified at any time or from time to time in accordance with the terms of this Agreement; *provided* that, in the event the proceeds of any Incremental Term Loan are deposited into the Letter of Credit Account as cash collateral for the Letters of Credit, the LC Commitment of each Issuing Bank shall be automatically increased by its ratable share (as a percentage of the aggregate LC Commitments of all Issuing Banks) of the amount equal to (a) the amount of the proceeds of such Incremental Term Loan deposited in the Letter of Credit Account divided by (b) [103.0]%.

"**LC Exposure**" means, at any time, the sum of (a) the aggregate maximum amount then available to be drawn under all issued and outstanding Letters of Credit, as calculated in accordance with Section 2.07(l) *plus* (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower (including, for the avoidance of doubt, from funds disbursed from the Letter of Credit Account) at such time.

"**LC Disbursement**" means a payment made by any Issuing Bank pursuant to a Letter of Credit.

"**LC Maturity Date**" means the latest Maturity Date in effect with respect to any Loans outstanding hereunder.

"**LC Participant**" shall have the meaning assigned to such term in Section 2.07(d).

"**Lenders**" means the Persons listed on Annex I and any Person that shall have become a party hereto pursuant to an Incremental Amendment or an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

"**Letter of Credit**" means any standby letter of credit issued (or deemed issued) pursuant to this Agreement or any Letter of Credit Agreement, including without limitation, the Existing Letters of Credit deemed issued hereunder upon the Closing Date.

"**Letter of Credit Account**" means a blocked, non-interest bearing trust account maintained by the Administrative Agent, in which the proceeds of the Term Loans shall be deposited and held as provided in this Agreement. Neither the Borrower nor any of the other Loan Parties shall have any property interest of any kind in the Letter of Credit Account or the funds held therein.

"**Letter of Credit Account Withdrawal Notice**" means a written notice delivered by the Borrower and signed by a Responsible Officer thereof to the Administrative Agent substantially in the form of Exhibit J hereto requesting a withdrawal of funds from the Letter of Credit Account and disbursement of such funds to an account of the Borrower, which notice shall set forth (i) the date of such withdrawal (which shall be a Business Day), (ii) the amount of such withdrawal, (iii) the identity of the customers, vendors or suppliers whose obligations will be cash collateralized or prepaid, (iv) whether the Loan Parties propose to utilize the Alternate Cash Collateral in accordance with Section 2.07(m)(i)(y)(A) or (B), (v) other information requested by the Administrative Agent (at the direction of the Required Lenders) or any Issuing Bank that is necessary or appropriate (as determined, in the case of a request from the Administrative Agent, by the Required Lenders) to determine pro forma compliance with the Loan Documents (including, without limitation, with respect to Alternate Cash Collateral proposed to be utilized in accordance with Section 2.07(m)(i)(y)(A), any proposed or existing arrangements under the proviso to Section 9.03(h) or, with respect to Alternative Cash Collateral proposed to be utilized in accordance with Section 2.07(m)(i)(y)(B), that the Borrower has obtained Special Board Approval with respect to the withdrawal of such proceeds and the utilization thereof for such purpose), and (vi) a certification that, after giving effect to such withdrawal, the LC Cash Collateralization Amount shall not exceed the Letter of Credit Deposit Amount.

"**Letter of Credit Agreements**" means all letter of credit applications and other agreements (including any amendments, modifications or supplements thereto) submitted by the Borrower, or entered into by the Borrower, with any Issuing Bank relating to any Letter of Credit.

"**Letter of Credit Deposit Amount**" means, at any time, the total amount on deposit in the Letter of Credit Account at such time that is then available for disbursement by the Issuing Banks in the event of an LC Disbursement as provided in Section 2.07(e).

"**LIBO Rate**" means, with respect to any Eurodollar Borrowing for any Interest Period therefor, the rate per annum (rounded to the nearest 1/100th of 1%) determined by the Administrative Agent by reference to the ICE Benchmark Administration London Interbank Offered Rate for deposits in Dollars (as set forth on the applicable Bloomberg screen page or by or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London, England time, on the second full Business Day preceding the first day of such Interest Period. Notwithstanding anything to the contrary contained in this definition, the LIBO Rate shall be deemed not to be less than one percent (1.0%) at any time.

"**Lien**" means any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on the common law, statute or contract, and whether such obligation or claim is fixed or contingent, and including but not limited to the lien or security interest arising from a mortgage, deed of trust, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" shall include easements, restrictions, servitudes, permits, conditions, covenants, exceptions or reservations. For the purposes of this Agreement, the Borrower and its Subsidiaries shall be deemed to be the owner of any Property which they have acquired or hold subject to a conditional sale agreement, or leases under a financing lease or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person in a transaction intended to create a financing.

"**Liquidity**" means, as of any date of determination, the sum of (a) any amounts available for borrowing by the Borrower or its wholly-owned Subsidiaries under the Revolving Facility or any other revolving or working capital facilities and (b) Unrestricted Cash.

"**LLC Agreement**" means that certain [Amended and Restated] Limited Liability Company Agreement of the Borrower, dated as of the date hereof, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"**Loan**" and "**Loans**" means an extension of credit under Article II of this Agreement, which may take the form of a Revolving Loan or a Term Loan; and such terms shall refer to Revolving Loans or Term Loans, individually or collectively, as the context requires.

"**Loan Documents**" means, collectively, this Agreement, the Notes (if any), the Fee Letter, and the Security Instruments.

"**Loan Parties**" and "**Loan Party**" mean, collectively or individually as the context requires, the Borrower and the Guarantors.

"**Material Adverse Change**" means any circumstance or event that has had a Material Adverse Effect.

"**Material Adverse Effect**" means a material adverse change in, or material adverse effect on, or a material impairment of (a) the business, operations, Property or condition (financial or otherwise) of the Borrower and the Subsidiaries taken as a whole, (b) the ability of any Loan Party to perform any of its obligations under any Loan Document, (c) the validity or enforceability of any Loan Document or (d) the rights and remedies of or benefits available to the Administrative Agent or any Lender under any Loan Document. Notwithstanding the foregoing, it is understood and agreed that the consummation of the Chapter 11 Emergence Transactions shall not be deemed a Material Adverse Effect.

"**Material Contracts**" means, collectively, each contract for which the breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect (including the contracts listed on Schedule 7.23).

"**Material Indebtedness**" means Indebtedness (other than the Loans), or obligations in respect of one or more Hedging Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount exceeding $3,500,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Borrower or any Subsidiary in respect of any Hedging Agreement at any time shall be the Hedging Termination Value.

"**Material Real Property**" means any real Property with a fair market value (as reasonably determined by the Borrower) exceeding $1,250,000; *provided* that aggregate fair market value of all real Property that is not "Material Real Property" shall not exceed $5,000,000 at any time.

"**Maturity Date**" means: (a) with respect to the Revolving Loans and Revolving Commitments, [●][3], 2025 (the "**Revolving Maturity Date**"), (b) with respect to the Initial Term Loan, [●][4], 2025, (c) with respect to any Incremental Term Loan, the final maturity date of such Incremental Term Loan as specified in the applicable Incremental Amendment, and (d) with respect to any Extended Term Loan, the Extended Maturity Date applicable to such Extended Term Loan as specified in the applicable Extension Amendment.

"**Measurement Period**" means, at any date of determination, the most recently completed four (4) consecutive fiscal quarters of Borrower and its Subsidiaries for which financial statements have been or were required to be delivered in accordance with Section 8.01(a) or 8.01(b).

"**Midstream Properties**" all tangible property used in (a) gathering, compressing, treating, processing and transporting natural gas, crude, condensate and natural gas liquids and other Hydrocarbons; (b) fractionating and transporting natural gas, crude, condensate and natural gas liquids and other Hydrocarbons; (c) marketing natural gas, crude, condensate and natural gas liquids and other Hydrocarbons; and (d) water distribution, supply, treatment and disposal

[3] To be 5 years after the closing date.
[4] To be 5 years after the closing date.

services thereof, including, gathering systems, processing plants, storage facilities, surface leases, Rights of Way and servitudes related to each of the foregoing.

"**Monthly ECP**" has the meaning assigned to such term in Section 3.04(b)(i)(B).

"**Moody's**" means Moody's Investors Service, Inc. and any successor thereto that is a nationally recognized rating agency.

"**Mortgage**" means each mortgage, deed of trust or any other document creating and evidencing a Lien on real or immovable Property and other Property in favor of the Administrative Agent for the benefit of the Secured Parties (or, with respect to any existing deed of trust in favor of the DIP Agent (as defined in the DIP Credit Agreement) for the benefit of the DIP Lenders, an assignment, modification and confirmation of such existing deed of trust), which shall be in a form reasonably satisfactory to the Administrative Agent and the Required Lenders, as the same may be amended, modified, supplemented or restated from time to time in accordance with the Loan Documents.

"**Mortgaged Property**" means any real Property owned by the Borrower or any of its Subsidiaries that is subject to a Mortgage.

"**MS/AL Sale**" has the meaning given to such term in the Chapter 11 Plan, as in effect of the Closing Date.

"**National Flood Insurance Program**" means the program created by the United States Congress pursuant to the Flood Insurance Regulations, that mandates the purchase of flood insurance to cover real property improvements located in special flood hazard areas in participating communities and provides protection to property owners through a federal insurance program.

"**Net Cash Proceeds**" means, for any event requiring a repayment of Loans pursuant to Sections 3.04(b)(iii), (b)(iv) or (b)(v), the gross cash proceeds (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received) from such event, net of attorneys' fees, accountants' fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset which is the subject of such event (other than any Lien pursuant to a Security Instrument) and other customary fees and expenses actually incurred in connection therewith, and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements).

"**Net Sale Proceeds**" means for any sale or other disposition of Property pursuant to an Asset Sale, the gross cash proceeds (including any cash received by way of deferred payment pursuant to a promissory note, receivable or otherwise, but only as and when received) received from such Asset Sale, net of (a) reasonable transaction costs (including, without limitation, any underwriting, brokerage or other customary selling commissions, reasonable legal, advisory and other fees and expenses (including title and recording expenses), associated therewith and sales, VAT and transfer taxes arising therefrom), (b) the amount of such gross cash proceeds required to be used to permanently repay any Indebtedness (other than the Secured Obligations) which is

permitted hereunder and which is secured by a Lien on the respective Property which was sold or otherwise disposed of which Lien is pari passu with or senior to the Lien securing the Secured Obligations, (c) the estimated net marginal increase in income taxes which will be payable by the Borrower or any Subsidiary with respect to the fiscal year of the Borrower in which the Asset Sale occurs as a result of such Asset Sale, and (d) the amount of all reserves required to be maintained by the Borrower or any Subsidiary in accordance with GAAP for any potential indemnity obligations that may be required to be made by the Borrower or any Subsidiary of as a result of such Asset Sale; *provided* that (i) such gross proceeds shall not include any portion of such gross cash proceeds which the Borrower determines in good faith should be reserved for post-closing adjustments (to the extent the Borrower delivers to the Administrative Agent a certificate signed by a Responsible Officer as to such determination), it being understood and agreed that on the day that all such post-closing adjustments have been determined (which shall not be later than fifteen (15) months following the date of the respective Asset Sale), the amount (if any) by which the reserved amount in respect of such Asset Sale exceeds the actual post-closing adjustments payable by the Borrower or any Subsidiary shall constitute Net Sale Proceeds on such date received by the Borrower and/or any Subsidiary from such Asset Sale, and (ii) at such time as the Borrower and the Subsidiaries are no longer required to maintain any indemnity reserves in accordance with GAAP as a result of any Asset Sale, the amount (if any) by which such reserved amount in respect of such Asset Sale exceeds the actual amount of indemnity payments made by the Borrower or any Subsidiary for which such reserves were required to be maintained in respect of such Asset Sale shall constitute Net Sale Proceeds at such time.

"**New Preferred Units**" means, collectively, the Series A Preferred Units and the Series B Preferred Units.

"**Non-Consenting Lender**" means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 12.02 and (b) has been approved by Required Lenders.

"**Non-Extending Lenders**" has the meaning assigned to such term in Section 2.08(c).

"**Non-Growth CapEx**" means, at any time of determination, capital expenditures of the type categorized as "Maintenance CapEx" or "Other CapEx" (but excluding "Growth CapEx") on the Annual Budget most recently delivered in accordance with Section 8.01(c).

"**Notes**" means the promissory notes of the Borrower described in Section 2.02(d) and being substantially in the form of Exhibit A, together with all amendments, modifications, replacements, extensions and rearrangements thereof.

"**Notice of Borrowing**" means a written request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit B, or such other form as shall be approved by the Administrative Agent.

"**OFAC**" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"**Organization Documents**" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non US jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement (including, with respect to Borrower, the LLC Agreement); and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"**Other Connection Taxes**" means, with respect to any Lender, Taxes imposed as a result of a present or former connection between such Lender and the jurisdiction imposing such Tax (other than connections arising from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing taxes or any other excise or Property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 5.04).

"**Oversubscribing Lender**" means a Lender identified on Annex III under the heading "Oversubscribing Lender" that is an Eligible Investor.

"**Oversubscription Payment**" has the meaning assigned to such term in Section 3.05(e).

"**Oversubscription Payment Amount**" means, with respect to an Oversubscribing Lender, the amount identified on Annex III under the heading "Oversubscription Payment Amount" with respect to such Oversubscribing Lender.

"**Participant**" has the meaning assigned to such term in Section 12.04(d)(i).

"**Participant Register**" has the meaning assigned to such term in Section 12.04(d)(ii).

"**Payment in Full**" means, the time at which (a) no Lender shall have any Commitments, Loan, or other amounts payable under the Loan Documents unpaid, unsatisfied or outstanding (other than in respect of contingent obligations, indemnities and expenses related thereto that are not then payable or in existence) and, (b) any outstanding Commitments have been terminated, and (c) all Secured Hedging Agreements have been terminated or novated and each Secured Hedging Agreement Counterparty has received payment of all amounts, if any, payable to it in connection with such termination or novation.

"**PBGC**" means the Pension Benefit Guaranty Corporation, or any successor thereto.

"**Perfection Certificate**" means that perfection certificate, dated the date hereof, executed by the Borrower, forming a part of the schedules to the Guaranty and Collateral Agreement.

"**Permitted Acquisition**" means any Investment in a joint venture or any other acquisition of Equity Interests or assets of a Person meeting each of the following conditions:

(a) no Default exists or results therefrom;

(b) such joint venture or Person is engaged in, or the acquired assets are useful in a Related Business.

(c) after giving effect to such Investment (and any Indebtedness incurred in connection therewith), the Total Net Leverage Ratio calculated on a Pro Forma Basis as of the last day of the most recently ended Measurement Period is less than or equal to 2.00 to 1.00;

(d) the Administrative Agent shall have received not less than 10 Business Days' (or such lesser time period as is reasonably acceptable to the Administrative Agent acting at the direction of the Required Lenders) prior notice of such Investment, which notice shall include (i) such pro forma financial statements that the Administrative Agent or Required Lenders may reasonably request and that demonstrate compliance with the foregoing clause (c), (ii) with respect to any Permitted Acquisition that involves a purchase price of not less than $5,000,000, quality of earnings reports with respect to the pro forma financial statements described in subclause (i), and (iii) copies of the material agreements relating to such Investment;

(e) such acquisition shall be consensual, shall have been approved by the target's board of directors (or comparable governing body) and shall be consummated in compliance with all applicable Governmental Requirements; and

(f) the Borrower shall deliver, or cause each applicable Subsidiary to deliver, such Security Instruments and other documents as required pursuant to, and prior to the deadlines set forth in, Section 8.14.

"**Permitted Loan Purchase**" has the meaning assigned to such term in Section 12.04(b)(v).

"**Permitted Loan Purchase Assignment and Acceptance**" shall mean an assignment and acceptance entered into by a Lender as an Assignor and the Borrower or any of its Subsidiaries as an Assignee, as accepted by the Administrative Agent in the form of Exhibit F-2 or such other form as shall be approved by the Administrative Agent and the Borrower (such approval not to be unreasonably withheld, conditioned or delayed).

"**Permitted Refinancing**" means, with respect to any Person, any Refinancing of any Indebtedness of such Person; *provided* that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced except by an amount equal to unpaid accrued interest and premium thereon plus other amounts owing or paid related to such Indebtedness, and fees and expenses reasonably incurred, in connection with such Refinancing and by an amount equal to any

existing commitments unutilized thereunder, (b) such Refinancing has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being Refinanced, (c) if such Indebtedness being Refinanced is Subordinated Indebtedness, to the extent such Indebtedness being Refinanced is subordinated in right of payment to the Obligations, such Refinancing is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being Refinancing, (d) to the extent such Indebtedness being Refinancing is secured by the Collateral and/or subject to intercreditor arrangements for the benefit of the Lenders, such Refinancing is either (1) unsecured or (2) secured and, if secured, subject to intercreditor arrangements on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being Refinancing, and such Refinancing is incurred by one or more Persons who is an obligor of the Indebtedness being Refinancing, (e) any such Refinancing has the same (or fewer) guarantors as the Indebtedness being Refinanced, and (f) if such Indebtedness being Refinanced is unsecured, such Refinancing is unsecured. Any reference to a Permitted Refinancing in this Agreement or any other Loan Document shall be interpreted to mean (a) a Permitted Refinancing of the subject Indebtedness and (b) any further Refinancings constituting a Permitted Refinancing of the Indebtedness resulting from a prior Permitted Refinancing.

"**Person**" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"**Petition Date**" has the meaning assigned to such term in the recitals to this Agreement.

"**Plan**" means any employee pension benefit plan, as defined in section 3(2) of ERISA, which (a) is currently or hereafter sponsored, maintained or contributed to by the Borrower, a Subsidiary or an ERISA Affiliate or (b) was at any time during the six (6) calendar years preceding the date hereof, sponsored, maintained or contributed to by the Borrower or a Subsidiary or an ERISA Affiliate.

"**Platform**" has the meaning assigned to such term in Section 8.01.

"**Prime Rate**" means, for any day, the prime lending rate published in *The Wall Street Journal* for such day; *provided* that if *The Wall Street Journal* ceases to publish for any reason such rate of interest, "Prime Rate" shall mean the prime lending rate as set forth on the Bloomberg page PRIMBB Index (or successor page) for such day (or such other service as determined by the Administrative Agent from time to time for purposes of providing quotations of prime lending interest rates); each change in the Prime Rate shall be effective on the date such change is effective. The prime rate is not necessarily the lowest rate charged by any financial institution to its customers.

"**Processing Plants**" means the Midstream Properties of the Borrower and its Subsidiaries comprised of any processing plants owned or leased from time to time by Borrower any of its Subsidiaries that are used in the business of Borrower and such Subsidiaries.

"**Pro Forma Basis**" means, with respect to the calculation of the Total Net Leverage Ratio or any other calculation under any applicable provision of the Loan Documents, as of any

date, that pro forma effect will be given to the Chapter 11 Emergence Transactions, any Permitted Acquisition or Investment, any issuance, incurrence, assumption or permanent repayment of Indebtedness (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transaction and for which any such financial ratio or other calculation is being calculated) and all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business, division or store, in each case that have occurred during the Measurement Period being used to calculate such financial ratio, or subsequent to the end of the Measurement Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at a Person who became a Subsidiary after the commencement of the Measurement Period), as if each such event occurred on the first day of the Measurement Period; *provided* that no pro forma effect will be given to pro forma cost savings or improvements related to operational efficiencies, strategic initiatives or purchasing improvements and other synergies except as otherwise provided in the definition of Consolidated EBITDA.

"**Property**" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible (including, without limitation, Gathering Systems, Midstream Properties, Processing Plants, cash, securities, accounts, contract rights and, with respect to any Person, Equity Interests or other ownership interests of any other Person), whether now in existence or owned or hereafter acquired.

"**Public Lender**" has the meaning assigned to such term in Section 8.01.

"**Purchase Money Indebtedness**" means Indebtedness, the proceeds of which are used to finance the acquisition, construction, installation, transport and/or improvement of inventory, equipment or other Property in the ordinary course of business.

"**Qualified ECP Guarantor**" means, in respect of any Hedging Agreement, each Loan Party that (a) has total assets exceeding $10,000,000 at the time any guaranty of obligations under such Hedging Agreement or grant of the relevant security interest becomes effective or (b) otherwise constitutes an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"**Recovery Event**" means the receipt by the Borrower or any Subsidiary of any cash insurance proceeds or condemnation awards payable by reason of a Casualty Event.

"**Redemption**" means with respect to any Indebtedness, the repurchase, redemption, prepayment, repayment, or defeasance or any other acquisition or retirement for value (or the segregation of funds with respect to any of the foregoing) of such Indebtedness; and "**Redeem**" has the correlative meaning thereto.

"**Refinance**" means, with respect of any Indebtedness, to refinance, refund, replace, renew, repay, modify, restate, defer, substitute, supplement, reissue, resell or extend such Indebtedness; and "**Refinancing**" shall have a correlative meaning.

"**Register**" has the meaning assigned to such term in Section 12.04(c).

"**Regulation D**" means Regulation D of the Board of Governors, as the same may be amended, supplemented or replaced from time to time.

"**Related Business**" means those businesses in which the Borrower or any of its Subsidiaries are engaged on the Closing Date, or that are reasonably similar, related or complementary thereto or reasonable extensions, developments or expansions thereof.

"**Related Parties**" means, with respect to any Person, such Person's Affiliates and the respective partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

"**Release**" means any depositing, spilling, leaking, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing.

"**Remedial Work**" has the meaning assigned to such term in Section 8.11(a).

"**Repayment Date**" means the date upon which (a) any permanent reduction or termination of Revolving Commitments occurs (or is required to occur), whether pursuant to Section 2.06 or otherwise, or (b) any repayment or prepayment of Term Loans (including on the Termination Date) occurs (or is required to occur), whether voluntary or mandatory and whether pursuant to Section 3.04 or otherwise, including, in each of the foregoing cases, upon the occurrence of (x) any change of control, merger or sale of all or substantially all assets in respect of the Loan Parties, (y) any acceleration, Default or Event of Default in respect of the Loans or (z) the commencement or consummation of any foreclosure, transfer in lieu of foreclosure, bankruptcy (including in connection with or related to the allowance of any claim in respect of the Secured Obligations or treatment of such claims under any plan of reorganization under the Bankruptcy Code), liquidation, receivership or other similar insolvency event or proceeding.

"**Required Class Lenders**" means, at any time, with respect to any Class, Lenders holding Loans and unused Commitments under such Class representing more than fifty percent (50%) of the sum of (x) the aggregate outstanding principal amount of Loans under such Class *plus* (y) the aggregate amount of all unused Commitments under such Class. The Loans and Commitments of any Defaulting Lender shall be disregarded in determining "Required Class Lenders" at any time.

"**Required Initial Lenders**" means, at any time, Initial Exit Lenders holding Loans and undrawn Commitments representing more than fifty percent (50%) of the sum of (x) the aggregate outstanding principal amount of Loans held by all Initial Exit Lenders *plus* (y) the aggregate amount of all unused Commitments of all Initial Exit Lenders. The Loans and Commitments of any Defaulting Lender shall be disregarded in determining "Required Initial Lenders" at any time.

"**Required Lenders**" means, at any time, Lenders holding Loans and undrawn Commitments representing more than fifty percent (50%) of the sum of (x) the aggregate outstanding principal amount of Loans held by all Lenders *plus* (y) the aggregate amount of all unused Commitments of all Lenders. The Loans and Commitments of any Defaulting Lender shall be disregarded in determining "Required Lenders" at any time.

"**Responsible Officer**" means, as to any Person, the Chief Executive Officer, the President, any Financial Officer or any Vice President of such Person. Unless otherwise specified, all references to a Responsible Officer herein shall mean a Responsible Officer of the Borrower acting on behalf of the Borrower.

"**Restricted Payment**" means any dividend or other distribution (whether in cash, securities or other Property) with respect to any Equity Interests in the Borrower or any of its Subsidiaries, or any payment (whether in cash, securities or other Property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Borrower or any of its Subsidiaries or any option, warrant or other right to acquire any such Equity Interests in the Borrower or any of its Subsidiaries.

"**Revolving Availability Period**" means the period commencing on the Closing Date to but excluding the earlier of (a) the Termination Date of the Revolving Loans and (b) the date of termination of the Revolving Commitments in full.

"**Revolving Borrowing**" means a Borrowing of Revolving Loans.

"**Revolving Commitment**" means, with respect to each Lender, the commitment, if any, of such Lender to make Revolving Loans hereunder in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name under the heading "Revolving Commitment" on Annex I hereto with respect to Revolving Commitments, as such amount may be (a) reduced from time to time pursuant to Section 2.06, (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to an Assignment and Assumption or (c) otherwise reduced, increased or modified from time to time pursuant to the terms hereof. The initial amount of each Lender's Revolving Commitment is set forth on Annex I hereto (under the heading "Revolving Commitment") or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Revolving Commitment, as the case may be. As of the Closing Date, the aggregate amount of all Revolving Commitments is $30,000,000.

"**Revolving Commitment Fee**" has the meaning assigned to such term in Section 3.05(a).

"**Revolving Exposure**" as the means, with respect to any Revolving Lender at any time, the outstanding principal amount of such Revolving Lender's Revolving Loans at such time.

"**Revolving Facility**" means the credit facility consisting of the Revolving Commitments and the Revolving Loans advanced thereunder.

"**Revolving Lender**" means a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

"**Revolving Loans**" means extensions of credit made by the Revolving Lenders to the Borrower from time to time pursuant to Section 2.01(a).

"**Revolving Maturity Date**" has the meaning assigned to such term in the definition of "Maturity Date".

"**Rights of Way**" has the meaning assigned to such term in Section 7.16.

"**Rollover Amount**" means, with respect to each Term Lender, the amount (if any) set forth opposite such Lender's name under the heading "Rollover Amount" on Annex I hereto.

"**Rollover Lender**" means each Term Lender on the Closing Date that has a Rollover Amount indicated on Annex I hereto set forth opposite such Term Lender's name.

"**Sanctions**" has the meaning assigned to such term in Section 7.26(d).

"**S&P**" means Standard & Poor's Ratings Group, a division of The McGraw-Hill Companies, Inc., and any successor thereto that is a nationally recognized rating agency.

"**SEC**" means the Securities and Exchange Commission or any successor Governmental Authority.

"**Secured Hedging Agreement**" means any Hedging Agreement of the Borrower or any Subsidiary with a Secured Hedging Agreement Counterparty.

"**Secured Hedging Agreement Counterparty**" means any (a) Person that is a party to a Hedging Agreement with the Borrower or any Subsidiary that enters into such Hedging Agreement while such Person is or before such Person becomes a Lender or an Affiliate of a Lender, whether or not such Person at any time ceases to be a Lender or an Affiliate of a Lender, as the case may be, or (b) assignee of any Person described in clause (a) above so long as such assignee is a Lender or an Affiliate of a Lender; provided, that, in the case of clauses (a) and (b), such Lender or Affiliate must have delivered a Secured Party Designation Notice to the Administrative Agent.

"**Secured Obligations**" means any and all obligations of and amounts owing or to be owing (including interest accruing at any post-default rate and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, any of its Subsidiaries or any other Loan Party, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) by the Borrower or any other Loan Party (whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising): (a) to the Administrative Agent, any trustee or any Lender under any Loan Document; (b) to any Secured Hedging Agreement Counterparty under any Secured Hedging Agreement, including any Secured Hedging Agreement in existence prior to the date hereof, but excluding any additional transactions or confirmations entered into (i) after such Secured Hedging Agreement Counterparty ceases to be a Lender or an Affiliate of a Lender or (ii) after assignment by such Secured Hedging Agreement Counterparty to another Person that is not a Lender or an Affiliate of a Lender; (c) to any Bank Products Provider in respect of any Bank Products; and (d) all renewals, extensions and/or rearrangements of any of the above; provided that, solely with respect to any Loan Party that is not an "eligible contract participant" under the Commodity Exchange Act, Excluded Hedging Obligations of such Loan Party shall in any event be excluded from "Secured Obligations" owing by such Loan Party.

"**Secured Parties**" means, collectively, the Administrative Agent, each Lender, each Secured Hedging Agreement Counterparty and each Bank Products Provider.

"**Security Instruments**" means the Guaranty and Collateral Agreement, the Mortgages, the other agreements, instruments or certificates described or referred to in Schedule 1.01(a), and any and all other agreements, instruments, consents, or certificates now or hereafter executed and delivered by the Borrower or any other Person (other than Secured Hedging Agreements, Bank Products agreements or participation or similar agreements between any Lender and any other lender or creditor with respect to any Secured Obligations pursuant to this Agreement) in connection with, or as security for the payment or performance of the Secured Obligations, the Notes, or this Agreement, as such agreements may be amended, modified, supplemented or restated from time to time.

"**Semi-Annual ECP**" has the meaning assigned to such term in Section 3.04(b)(i)(A).

"**Series A Preferred Units**" means "Series A Preferred Units" of the Borrower as defined in and issued pursuant to the LLC Agreement.

"**Series B Preferred Units**" means "Series B Preferred Units" of the Borrower as defined in and issued pursuant to the LLC Agreement.

"**Special Board Approval**" means the approval of the majority of the Board of Directors of the Borrower, including the approval of the majority of the Designee Members, if any.

"**Solvent**" means, with respect to any Person as of any date, that (a) the value of the assets of such Person (both at fair value and present fair saleable value) is, on the date of determination, greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person as of such date, (b) as of such date, such Person is able to pay all liabilities of such Person as such liabilities mature, and (c) as of such date, such Person does not have unreasonably small capital given the nature of its business. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"**Statutory Reserve Rate**" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board of Governors to which the Administrative Agent is subject for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board of Governors). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"**Subordinated Indebtedness**" means the collective reference to any Indebtedness of the Loan Parties subordinated in right and time of payment to the Secured Obligations and

containing such other terms and conditions, in each case as are satisfactory to the Administrative Agent (acting at the direction of the Required Lenders).

"**Subsidiary**" means: (a) any Person of which at least a majority of the outstanding Equity Interests having by the terms thereof ordinary voting power to elect a majority of the board of directors, manager or other governing body of such Person (irrespective of whether or not at the time Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by (i) another Person, (ii) one or more of such other Person's Subsidiaries, or (iii) collectively, such other Person and one or more of such other Person's Subsidiaries, and (b) any partnership of which such other Person or any of such other Person's Subsidiaries is a general partner. Unless otherwise indicated herein, each reference to the term "Subsidiary" means a Subsidiary of the Borrower.

"**Synthetic Leases**" means, in respect of any Person, all leases which shall have been, or should have been, in accordance with GAAP, treated as operating leases on the financial statements of the Person liable (whether contingently or otherwise) for the payment of rent thereunder and which were properly treated as indebtedness for borrowed money for purposes of U.S. federal income taxes, if the lessee in respect thereof is obligated to either purchase for an amount in excess of, or pay upon early termination an amount in excess of, 80% of the residual value of the Property subject to such operating lease upon expiration or early termination of such lease.

"**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Term Borrowing**" means a Borrowing of Term Loans.

"**Term Commitment**" means, individually or collectively, the Initial Term Commitments and/or the Incremental Term Commitment, as the context may require.

"**Term Facility**" means, individually or collectively, the Initial Term Facility and/or the Incremental Term Facility, as the context may require.

"**Termination Date"** means, with respect to any Loan, the earlier of (a) the Maturity Date of such Loan and (b) the date of acceleration of such Loan pursuant to Section 10.02(a).

"**Term Lender**" means a Lender with a Term Commitment or an outstanding Term Loan.

"**Term Loan**" means, individually or collectively, the Initial Term Loan, any Incremental Term Loans and/or any Extended Term Loans, as the context may require.

"**Total Net Leverage Ratio**" means, as of any date of determination, the ratio of (a) Consolidated Total Indebtedness as of such date, net of Unrestricted Cash as of such date not to exceed $10,000,000, to (b) Consolidated EBITDA for the Measurement Period then most recently ended.

"**Transactions**" means (a) with respect to the Borrower, the execution, delivery and performance by the Borrower of this Agreement and each other Loan Document to which it is a party, the borrowing of Loans, the use of the proceeds thereof, and the grant of Liens by the Borrower on Collateral pursuant to the Security Instruments, and (b) with respect to each Guarantor, the execution, delivery and performance by such Guarantor of each Loan Document to which it is a party, the guaranteeing of the Secured Obligations and the other obligations under the Guaranty and Collateral Agreement by such Guarantor and such Guarantor's grant of the security interests and provision of Collateral under the Security Instruments, and the grant of Liens by such Guarantor on Collateral pursuant to the Security Instruments.

"**Type**", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Alternate Base Rate or the Adjusted LIBO Rate.

"**Unrestricted Cash**" means cash and/or Cash Equivalents of the Borrower or its Subsidiaries that would not appear as "restricted" on a consolidated balance sheet of the Borrower and its Subsidiaries, and excludes cash and Cash Equivalents in the Letter of Credit Account and Alternate Cash Collateral.

"**Upfront Payment**" has the meaning assigned to such term in Section 3.05(d).

"**USA Patriot Act**" has the meaning assigned to such term in Section 12.15.

"**U.S. Tax Compliance Certificate**" has the meaning assigned to such term in Section 5.03(f).

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining scheduled installment, sinking fund, serial maturity or other required scheduled payments of principal, including payment at final scheduled maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness; provided that the effects of any prepayments made on such Indebtedness shall be disregarded in making such calculation.

"**Wholly-Owned Subsidiary**" means any Subsidiary of which all of the outstanding Equity Interests (other than any directors' qualifying shares mandated by applicable law), on a fully-diluted basis, are owned by the Borrower and/or one or more of the Wholly-Owned Subsidiaries.

"**Wilmington"** has the meaning assigned to such term in the preamble to this Agreement.

"**Withdrawal**" shall mean a disbursement of funds from the Letter of Credit Account in accordance with Section 2.07(m).

"**Withdrawal Date**" shall mean a disbursement of funds from the Letter of Credit Account in accordance with Section 2.07(m).

"**Withdrawal Request**" shall mean a written request by an Issuing Bank for a Withdrawal, substantially in the form of Exhibit I.

"**Withdrawal Suspension Notice**" has the meaning assigned to such term in Section 6.02(d).

"**Withdrawal Suspension Termination Notice**" shall mean a disbursement of funds from the Letter of Credit Account in accordance with Section 2.07(m).

"**Withholding Agent**" means any Loan Party or the Administrative Agent.

"**Write-Down and Conversion Powers**" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.02 Types and Classes of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a "**Eurodollar Loan**") or Class (e.g., a "**Revolving Loan**), and Borrowings may be classified and referred to by Type (e.g., a "**Eurodollar Borrowing**") or Class (e.g. a "**Revolving Borrowing**").

Section 1.03 Terms Generally; Rules of Construction. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in the Loan Documents), (b) any reference herein to any law or regulation shall be construed, unless otherwise specified, as referring to such law or regulation as amended, modified, supplemented, codified or reenacted, in whole or in part, and in effect from time to time, (c) any reference herein to any Person shall be construed to include such Person's successors and assigns (subject to the restrictions contained in the Loan Documents), (d) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) with respect to the determination of any time period, the word "from" means "from and including" and the word "to" means "to and including" and (f) any reference herein to Articles, Sections, Annexes, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Annexes, Exhibits and Schedules to, this Agreement. No provision of this Agreement or any other Loan Document shall be interpreted or construed against any Person solely because such Person or its legal representative drafted such provision.

Section 1.04 Accounting Terms and Determinations; GAAP.

(a) Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made,

and all financial statements and certificates and reports as to financial matters required to be furnished to the Administrative Agent or the Lenders hereunder shall be prepared, in accordance with GAAP, applied on a basis consistent with the Borrower Financial Statements except for changes in which the Borrower's independent certified public accountants concur and which are disclosed to the Administrative Agent on the next date on which Borrower Financial Statements are required to be delivered to the Lenders pursuant to Section 8.01(a); provided that unless the Borrower and the Required Lenders shall otherwise agree in writing, no such change shall modify or affect the manner in which compliance with the covenants contained herein is computed such that all such computations shall be conducted utilizing financial information presented consistently with prior periods.

(b) Notwithstanding anything to the contrary contained in paragraph (a) above of the definition of "Capital Lease," all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the effectiveness of the Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842) ("**ASU**") shall continue to be accounted for as operating leases for purposes of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as capitalized Lease Obligations in the Company's financial statements.

Section 1.05 Emergence Restructuring Transactions. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, neither this Agreement nor any other Loan Document shall prohibit the consummation by the Borrower or its Subsidiaries of (i) the "Transaction" made in accordance with (and as defined in) the Chapter 11 Plan, as in effect on the Closing Date (subject to the consent requirements set forth therein), including the corporate, restructuring or other transactions expressly described in Article VII of the Chapter 11 Plan or the Implementation Memorandum (as defined in the Chapter 11 Plan), each as in effect on the Closing Date, that, in each case, are necessary or appropriate to implement or effectuate the Chapter 11 Plan, as in effect on the Closing Date, or (ii) the transactions set forth on Schedule 1.05 (the transactions described in clauses (i) and (ii), other than the Transactions, collectively, the "Chapter 11 Emergence Transactions"), and the consummation of Chapter 11 Emergence Transactions shall not constitute, result in or be deemed to constitute (A) a breach of any representation or warranty under this Agreement or any other Loan Document, (B) a breach of any covenant set forth in this Agreement or any other Loan Document other than Section 9.01 (but including the other covenants set forth in Articles VIII and IX) or (C) other than a Default or Event of Default arising from a breach of Section 9.01, a Default or Event of Default under this Agreement or any other Loan Document.

Section 1.06 Time Periods. Unless otherwise specified, in the event any time period or any date provided in this Agreement ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the immediately preceding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

ARTICLE II
THE CREDITS

Section 2.01 Commitments.

(a) Revolving Loans. Subject to the terms and conditions of this Agreement, each Revolving Lender agrees to make, from time to time during the Revolving Availability Period, Revolving Loans to the Borrower denominated in Dollars in an aggregate principal amount which will not result in (i) such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment or (ii) the aggregate Revolving Exposures exceeding the aggregate Revolving Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.

(b) Term Loans. Subject to the terms and conditions of this Agreement, each Term Lender agrees to make, on the Closing Date, an Initial Term Loan to the Borrower denominated in Dollars in a principal amount equal to its Initial Term Commitment; *provided* that, in the case of each Rollover Lender, the portion of its Initial Term Commitment equal to its Rollover Amount shall be made, as provided in the DIP Payoff Letter, via the DIP Agent remitting directly to the Letter of Credit Account (and not to such Rollover Lender) the cash proceeds (in the amount equal to such Rollover Lender's Rollover Amount) that would otherwise be distributed to such Rollover Lender in payment of all or a portion of its DIP Term Loans (as defined in the DIP Credit Agreement).[5]

(c) Upon the making of such Initial Term Loans, the Initial Term Commitments shall be terminated and reduced to zero ($0). Amounts repaid or prepaid in respect of Term Loans may not be reborrowed. The proceeds of the Initial Term Loans shall be deposited into the Letter of Credit Account to cash collateralize the Letters of Credit pursuant to Section 2.07(j).

Section 2.02 Loans and Borrowings.

(a) Borrowings; Several Obligations. Each Loan of a given Class shall be made as part of a Borrowing consisting of Loans of such Class deemed made by the applicable Lenders ratably in accordance with their respective applicable Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; *provided* that the Commitments are several, and other than as expressly provided herein with respect to a Defaulting Lender, no Lender shall be responsible for any other Lender's failure to make Loans as required herein.

(b) Types of Loans. Subject to Section 3.03, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

[5] NTD: The DIP Payoff Letter will need to be signed by the Rollover Lenders and include a direction from the Rollover Lenders to roll the principal payment (or whatever portion thereof) due to them into the new loans. Please also provide the Confirmation Order for review when available.

(c) Minimum Amounts; Limitation on Number of Borrowings. At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of $500,000 and not less than $1,000,000. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of $100,000 and not less than $500,000; *provided* that an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Revolving Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.07(i). Borrowings of more than one Type and Class may be outstanding at the same time, *provided* that there shall not at any time be outstanding more than a total of four (4) Eurodollar Borrowings plus one (1) additional Eurodollar Borrowing for each Borrowing of Incremental Term Loans made after the Closing Date or Extended Term Loan tranche created after the Closing Date. Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date applicable to such Class of Loans (or, in the case of Initial Term Loans, Extended Term Loans or Incremental Term Loans, the maturity date applicable to such Initial Term Loans, Extended Term Loans or Incremental Term Loans).

(d) Notes. The Loans made by each Lender, if requested by such Lender, shall be evidenced by one or more promissory notes of the Borrower in substantially the form of Exhibit A, dated, in the case of (i) any Lender party hereto as of the date of this Agreement, as of the date of this Agreement, (ii) any Lender that becomes a party hereto pursuant to an Assignment and Assumption or Incremental Amendment, as of the effective date of the Assignment and Assumption or Incremental Amendment, payable to such Lender in a principal amount equal to its Revolving Commitment or Term Commitment (or Term Loans), as applicable, and otherwise duly completed or (iii) any Extending Lenders, as of the Extension Effective Date. In the event that the amount of the principal outstanding balance of any Loan(s) increases or decreases for any reason (whether pursuant to Section 12.04(b) or otherwise) or the Maturity Date of any Loan(s) is extended, if requested by the Lender holding such Loan(s), the Borrower shall deliver or cause to be delivered on the effective date of such increase or decrease, a new Note payable to such Lender in a principal amount equal to its Revolving Commitment or Term Commitment (or Term Loans), as applicable, after giving effect to such increase or decrease or Maturity Date extension, and otherwise duly completed. The date, amount, Type, interest rate and, if applicable, Interest Period of each Loan made by each Lender, and all payments made on account of the principal thereof, shall be recorded by such Lender on its books for its applicable Note, and, prior to any transfer, may be endorsed by such Lender on a schedule attached to such Note or any continuation thereof or on any separate record maintained by such Lender. Failure to make any such notation or to attach a schedule shall not affect any Lender's or the Borrower's rights or obligations in respect of such Loans or affect the validity of such transfer by any Lender of its Note.

(e) Lenders' Book and Records. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of the Borrowers to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on the Borrower, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or the Borrowers' Obligations in respect of any

applicable Loans; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

Section 2.03 Procedure for Advance of Loans.

(a) Initial Term Loan. To request the Borrowing of the Initial Term Loan, the Borrower shall give the Administrative Agent an irrevocable Notice of Borrowing prior to 11:00 a.m., New York City time, three (3) Business Days prior to the Closing Date.

(b) Revolving Loans. To request the Borrowing of a Revolving Loan, the Borrower shall give the Administrative Agent an irrevocable Notice of Borrowing prior to 11:00 a.m., New York City time, three (3) Business Days prior to the date of the proposed Borrowing. Upon receipt of such Notice of Borrowing from the Borrower, the Administrative Agent shall promptly notify each Revolving Lender thereof.

(c) Incremental Term Loans. Any Incremental Term Loans shall be borrowed pursuant to and in accordance with Section 2.06.

(d) Borrowing Notices. Each Notice of Borrowing shall be signed by a Responsible Officer of the Borrower and shall specify (i) the requested date of the borrowing (which shall be a Business Day), (ii) the Class of Loans to be borrowed, (iii) the principal amount of Loans to be borrowed, (iv) the Type of Loan to be borrowed, (v) if applicable, the duration of the Interest Period with respect thereto and (vi) in the case of a Borrowing of Revolving Loans, the wiring information of the account of the Borrower to which the proceeds of such borrowing are to be disbursed. If no election as to the Type of Borrowing is specified in a Notice of Borrowing, then the requested Borrowing shall be a Eurodollar Borrowing with an Interest Period of one month's duration. If no Interest Period is specified in the Notice of Borrowing with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(e) Funding Mechanics.

(i) Each Lender shall make the amount of its Loan requested in a Notice of Borrowing available to the Administrative Agent not later than 12:00 noon (New York City time) on the applicable date of such Borrowing by wire transfer of same day funds in Dollars to the account designated by the Administrative Agent to the Lenders; *provided*, however, that the portion of each Rollover Lender's Term Loan equal to its Rollover Amount shall be made in accordance with the provisio to Section 2.01(b). Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein and receipt of all of the proceeds of such borrowing from the applicable Lenders, the Administrative Agent shall make the proceeds of such Loans available to the Borrower on the date of such Borrowing by disbursing the proceeds of all such Loans received by the Administrative Agent from Lenders to the account of the Borrower designated in the Notice of Borrowing (or, in the case of proceeds of Term Loans, to the Letter of Credit Account).

(ii) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may

assume that such Lender has made such share available on such date in accordance with Section 2.03(e)(i) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable to ABR Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

Section 2.04 Interest Elections.

(a) Conversion and Continuance. Each Borrowing initially shall be of the Type specified in the applicable Notice of Borrowing and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Notice of Borrowing. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.04. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) Interest Election Requests. To make an election pursuant to this Section 2.04, the Borrower shall deliver to the Administrative Agent an Interest Election Request by the time that a Notice of Borrowing would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable.

(c) Information in Interest Election Requests. Each Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to Sections 2.04(c)(iii) and (iv) shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration.

(d) Notice to Lenders by the Administrative Agent. Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) Effect of Failure to Deliver Timely Interest Election Request and Events of Default on Interest Election. If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing (unless the Required Lenders otherwise direct): (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing (and any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective) and (ii) unless repaid, each Eurodollar Borrowing shall be automatically converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

Section 2.05 Incremental Facility.

(a) At any time, the Borrower may, by delivery of an executed Incremental Request to the Administrative Agent (which Administrative Agent shall promptly forward to the Lenders), elect to request the establishment of one or more Incremental Term Commitments to make Incremental Term Loans which shall be term loans of the same Class as any outstanding Initial Term Loans; *provided* that (i) the total aggregate amount for all such Incremental Term Commitments shall not (as of any date of incurrence thereof) exceed $15,000,000, and (ii) the total aggregate amount of each Incremental Term Commitment (and the Incremental Term Loan made thereunder) shall be in integral multiples of $1,000,000 and shall not be less than a minimum principal amount of $5,000,000 or, in each case if less, the remaining amount permitted pursuant to the foregoing clause (i). Each such Incremental Request shall specify the proposed effective date (the "**Incremental Effective Date**") of any Incremental Term Commitment, which shall be a date not less than ten (10) Business Days after the date on which such notice is delivered to Administrative Agent.

(b) The Borrower may invite any Lender, any Affiliate of any Lender and/or any Approved Fund, and/or any other Person consented to by the Administrative Agent to the extent such consent, if any, would be required under Section 12.04(b) for an assignment of Loans to such Lender or Incremental Term Lender (such consent not to be unreasonably withheld or

delayed), to provide an Incremental Term Commitment; *provided*, that (i) no Lender will have an obligation to make any Incremental Term Commitment; (ii) each Lender (other than any Defaulting Lender) shall be offered the opportunity to provide up to its pro rata share (calculated based on the Loans and undrawn Revolving Commitments of such Lender as a percentage of the aggregate Loans and underdrawn Revolving Commitments of all Lenders (other than any Defaulting Lender)) of the total aggregate amount of such Incremental Term Commitment; and (iii) solely to the extent such Lender declines to provide all or a portion of its pro rata share of the Incremental Term Commitment within ten (10) Business Days after its receipt of the Incremental Request on the terms specified by the Borrower and any arranger of such Incremental Term Facility (it being understood that a Lender shall be deemed to have declined such offer if it has not accepted such offer in whole or in part within ten (10) Business Days of receipt), the Borrower may offer the amount of such declined Incremental Term Commitment to other Persons eligible to become Lenders hereunder (including other Lenders) on the same terms offered to such Lender. Any proposed Incremental Term Lender offered or approached to provide all or a portion of any Incremental Term Commitment may elect or decline, in its sole discretion, to provide such Incremental Term Commitment.

(c) Any Incremental Term Commitment shall become effective as of such Incremental Effective Date; *provided* that:

(i) Special Board Approval has been obtained in respect of such Incremental Term Facility, written notice and a copy of which shall have been provided by the Borrower to the Administrative Agent (and the Administrative Agent may conclusively rely on such written notice as evidence that such Special Board Approval has been obtained);

(ii) each condition precedent set forth in Section 6.02 that is applicable to a Borrowing of Incremental Term Loans has been satisfied;

(iii) the proceeds of the Incremental Term Loans shall be deposited into the Letter of Credit Account to cash collateralize the Letters of Credit pursuant to Section 2.07(j);

(iv) the Incremental Term Loan made under such Incremental Term Commitment (1) shall constitute Secured Obligations of the Borrower, (2) shall be secured only by the Collateral pursuant to Liens that rank pari passu with the Liens securing the other Secured Obligations, and (3) may be guaranteed only by the Guarantors on a pari passu basis with the other Secured Obligations.

(v) in the case of each Incremental Term Loan (the terms of which shall be set forth in the relevant Incremental Amendment), (A) such Incremental Term Loan will mature and amortize in a manner reasonably acceptable to the Administrative Agent (acting at the direction of the Required Lenders), the Incremental Term Lenders making such Incremental Term Loan, and the Borrower, but will not in any event, as of the Incremental Effective Date, have a Weighted Average Life to Maturity shorter than the remaining Weighted Average Life to Maturity of the Initial Term Loan or a final scheduled Maturity Date earlier than the Maturity Date of the Initial Term Loan; (B) the All-In-Yield for such Incremental Term Loan shall be determined by the Required Lenders, the applicable Incremental Term Lenders and the Borrower on the applicable Incremental Effective Date and shall be set forth in each applicable Incremental

Amendment; *provided* that if the All-In- Yield in respect of any Incremental Term Loan exceeds the All-In-Yield for the Initial Term Loan by more than 0.50%, then the All-In-Yield for the Initial Term Loan shall be increased so that the All-In-Yield in respect of such Initial Term Loan is equal to the All-In-Yield for such Incremental Term Loan minus 0.50%; and (C) except as provided above, the terms, provisions and documentation of such Incremental Term Loans shall be identical (other than with respect to interest rate margins, upfront fees, original issue discount or similar fees) to the Initial Term Loans, as such terms, provisions and documentation are amended from time to time; and

(vi) the Borrower shall deliver or cause to be delivered any customary legal opinions or other documents (including, without limitation, a resolution duly adopted by the Board of Directors of each Loan Party authorizing such Incremental Term Loan) as required by the terms of the Incremental Amendment.

(d) The Incremental Term Loans shall be deemed to be Loans and Term Loans under and as defined in this Agreement. Any Incremental Term Lender making any Incremental Term Loan shall be entitled to the same voting rights as the existing Term Lenders under this Agreement and each Incremental Term Loan shall receive proceeds of prepayments on the same basis as the Initial Term Loan (such prepayments to be shared *pro rata* on the basis of the original aggregate funded amount thereof among the Initial Term Loan and the Incremental Term Loans).

(e) Such Incremental Term Commitments shall be effected pursuant to one or more Incremental Amendments executed and delivered by the Borrower, the Administrative Agent and the applicable Incremental Term Lenders (each of which Incremental Amendments may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent, to effect the provisions of this Section 2.05).

Section 2.06 Termination and Reduction of Revolving Commitments.

(a) Scheduled Termination of Commitments. Unless previously terminated, the Revolving Commitments shall terminate on the Termination Date of the Revolving Loans. If at any time the Revolving Commitments are terminated or reduced to zero, then such Revolving Commitments shall terminate on the effective date of such termination or reduction.

(b) Optional Termination and Reduction of Commitments.

(i) The Borrower may at any time terminate, or from time to time reduce, the Revolving Commitments; *provided* that each reduction of the Commitments shall be in an amount that is an integral multiple of $500,000 and not less than $1,000,000.

(ii) The Borrower shall notify the Administrative Agent in writing of any election to terminate or reduce the Revolving Commitments under Section 2.06(b)(i) at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the amount of the reduction and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.06(b)(ii) shall be irrevocable;

provided any notice of termination delivered in connection with any Refinancing of all of the Revolving Loans with the proceeds of such Refinancing or of any incurrence of Indebtedness, may be, if expressly so stated to be, contingent upon the consummation of such Refinancing or incurrence and may be revoked by the Borrower in the event such Refinancing is not consummated (*provided* that the failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 5.02).

(c) Termination and Reductions of Commitments. Any termination or reduction of the Revolving Commitments shall be permanent and may not be reinstated. Each reduction of the Revolving Commitments shall be made ratably among the Revolving Lenders in accordance with each Revolving Lender's Revolving Commitment as a percentage of the aggregate Revolving Commitments.

(d) Call Premium. Any termination or reduction of the Revolving Commitments are subject to the Call Premium, which shall be paid concurrently on the Repayment Date of such termination or reduction.

Section 2.07 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Dollar denominated Letters of Credit for its own account or for the account of any of its Subsidiaries, in a form reasonably acceptable to the applicable Issuing Bank, at any time and from time to time during the LC Availability Period; *provided* that the Borrower may not request the issuance, amendment, renewal or extension of Letters of Credit hereunder, if, after giving effect to such issuance, amendment, renewal or extension, (i) the LC Cash Collateralization Amount would exceed the Letter of Credit Deposit Amount or (ii) the aggregate LC Exposure for any Issuing Bank would exceed its applicable LC Commitment. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Agreement, the terms and conditions of this Agreement shall control.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions.

(i) [The Existing Letters of Credit shall be deemed to have been cancelled and re-issued hereunder as of the Closing Date.] To request the issuance of any other Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall fax (or transmit by electronic mail, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the Administrative Agent (not less than three (3) Business Days in advance of the requested date of issuance, amendment, renewal or extension) a notice:

(A) requesting the issuance of a Letter of Credit or identifying the Letter of Credit to be amended, renewed or extended;

(B) specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day);

(C) specifying the date on which such Letter of Credit is to expire (which shall comply with Section 2.07(c));

(D) specifying the amount of such Letter of Credit;

(E) specifying the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit;

(F) specifying the current total LC Exposures (without regard to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit) and the *pro forma* total LC Exposures (giving effect to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit); and

(G) specifying the current Letter of Credit Deposit Amount and calculating the *pro forma* LC Cash Collateralization Amount (giving effect to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit).

(ii) Each notice shall constitute a representation and warranty with respect to the information set forth therein and that after giving effect to the requested issuance, amendment, renewal or extension, as applicable, (x) the LC Cash Collateralization Amount shall not exceed the Letter of Credit Deposit Amount, (y) the aggregate LC Exposure of the applicable Issuing Bank shall not exceed its applicable LC Commitment, and (z) each condition precedent set forth in Section 6.02 applicable to the issuance, amendment, renewal or extension of such Letter of Credit has been satisfied.

(iii) If requested by the applicable Issuing Bank in connection with any request for a Letter of Credit (other than the Existing Letters of Credit deemed to be issued hereunder on the Effective Date), the Borrower also shall submit an appropriately completed letter of credit application on such Issuing Bank's standard form as in effect from time to time, which application may require the inclusion of draft language for such Letter of Credit that is reasonably acceptable to such Issuing Bank and may be required to be signed by a Responsible Officer of the Borrower.

(iv) No Issuing Bank will be required to: (A) issue any Letter of Credit if (1) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such Issuing Bank in good faith deems material to it, (2) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of

credit generally, (3) except as otherwise agreed by such Issuing Bank, such Letter of Credit is in an initial stated amount less than $10,000, (4) such Letter of Credit is to be denominated in a currency other than Dollars, or (5) after giving effect to the requested issuance (or amendment, renewal or extension, including automatic renewal or extension, as applicable), (x) the LC Cash Collateralization Amount shall exceed the Letter of Credit Deposit Amount, (y) the aggregate LC Exposure of the applicable Issuing Bank shall exceed its applicable LC Commitment, or (z) any condition precedent set forth in Section 6.02 applicable to the issuance (or amendment, renewal or extension, as applicable) of such Letter of Credit has not been satisfied; or (B) amend, renew or extend any Letter of Credit (including, by automatic renewal or extension) if such Issuing Bank would not be required at such time to issue the Letter of Credit in its amended form under the terms hereof or if the beneficiary of such Letter of Credit does not accept the proposed amendment, renewal or extension thereto or thereof.

(v) Upon the issuance of any Letter of Credit or amendment, renewal or extension of a Letter of Credit, the Issuing Bank shall promptly notify in writing the Administrative Agent, which notice shall be accompanied by a copy of such Letter of Credit or amendment, renewal or extension, as applicable. The Administrative Agent shall provide a copy of each such notice to the Revolving Lenders promptly following its receipt thereof.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one (1) year (unless otherwise agreed upon by the Borrower and the applicable Issuing Bank in their sole discretion) after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one (1) year (unless otherwise agreed upon by the Borrower and the applicable Issuing Bank in their sole discretion) after any such renewal or extension) and (ii) the date that is five (5) Business Days prior to the LC Maturity Date. Each Letter of Credit with a one (1) year term may provide for the automatic renewal or extension thereof for additional one (1) year periods; *provided* that no such period shall extend beyond the date described in clause (ii) above. Notwithstanding the foregoing, Letters of Credit may be issued with an expiration date that extends past the date set forth in clause (ii) above so long as a "backstop" letter of credit or other cash collateralization thereof at [103.0]% of the value of such outstanding Letter of Credit pursuant to arrangements reasonably satisfactory to such Issuing Bank has been provided to such Issuing Bank.

(d) LC Participations. Any Issuing Bank may at any time, without the consent of, or notice to the Borrower, the Administrative Agent or any other Issuing Bank, sell participations in Letters of Credit (up to the aggregate amount available to be drawn under such Letter of Credit) or LC Disbursements that have not been reimbursed by the Borrower as provided in Section 2.07(e) to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, an "**LC Participant**"); *provided* that (A) such Issuing Bank's obligations under this Agreement shall remain unchanged, (B) such Issuing Bank shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Lenders and any other Issuing Banks shall continue to deal solely and directly with such Issuing Bank in connection with such Issuing Banks's rights and obligations under this Agreement. Notwithstanding the foregoing, any agreement or instrument pursuant to which an Issuing Bank sells such a participation may provide such LC Participant with the right to subrogate to the Issuing Bank's rights hereunder or the right to direct the Issuing Bank with respect to its rights (x) to enforce this Agreement, (y) to

approve any amendment, modification or waiver of any provision of this Agreement with respect to the Issuing Bank's participated interests in a Letter of Credit or LC Disbursement, or (z) to deliver any notices or exercise any other rights of the Issuing Bank hereunder.

(e) Reimbursement.

(i) If any Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, it shall promptly notify the applicable Borrower and the Administrative Agent in writing and the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent for the account of such Issuing Bank an amount equal to such LC Disbursement (x) if the Borrower shall have received notice of such LC Disbursement prior to 2:00 p.m. New York time, not later than 2:00 p.m. New York time on the date that is one (1) Business Day immediately following the day that the Borrower receives such notice, or (y) if the Borrower shall not have received notice of such LC Disbursement prior to 2:00 p.m. New York time, not later than 2:00 p.m., New York time on the date that is two (2) Business Days immediately following the day that the Borrower receives such notice. Subject to the last sentence of Section 2.07(e)(ii), promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this Section 2.07(e), the Administrative Agent shall distribute such payment to the applicable Issuing Bank.

(ii) If any Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, to the extent that the Borrower does not satisfy its obligations under Section 2.07(e)(i) above, such Issuing Bank may request that the Administrative Agent disburse funds from the Letter of Credit Account to such Issuing Bank to reimburse such Issuing Bank for such LC Disbursement, by delivering to the Administrative Agent a Withdrawal Request specifying (A) the amount of the disbursement to be made to such Issuing Bank, (B) the Letter of Credit to which such disbursement relates and (C) the wiring information of the bank account of such Issuing Bank to which such funds are to be sent (and the Borrower hereby irrevocably authorizes and instructs such Issuing Bank to request such withdrawals and applications without further notice or consent of any kind). Promptly following its receipt of a Withdrawal Request, the Administrative Agent shall disburse funds from the Letter of Credit Account in an aggregate amount equal to the amount specified in such Withdrawal Request to the account of the Issuing Bank specified in such Withdrawal Request. All proceeds of the Term Loans shall be held in the Letter of Credit Account at all times until such proceeds are disbursed or otherwise applied in accordance with this Agreement. If the Administrative Agent, for the account of the applicable Issuing Bank, receives from the Borrower funds representing a reimbursement with respect to any LC Disbursement and such funds are received by the Administrative Agent after the Administrative Agent has disbursed funds from the Letter of Credit Account to the Issuing Bank in respect of the same LC Disbursement, the Administrative Agent shall deposit the funds received from the Borrower into the Letter of Credit Account for the purpose of cash collateralizing Letters of Credit hereunder.

(iii) With respect to any disbursement, withdrawal, transfer, or application of funds from the Letter of Credit Account hereunder, the Administrative Agent shall be entitled to conclusively rely upon, and shall be fully protected in relying upon, any Withdrawal Request submitted by an Issuing Bank as evidence that (A) an LC Disbursement has been made by such Issuing Bank in the amount specified in such Withdrawal Request and (B) such Issuing Bank is

entitled to receipt funds from the Letter of Credit Account in the amount specified in such Withdrawal Request. Notwithstanding anything herein to the contrary, the Administrative Agent shall have no obligation to disburse any amount from the Letter of Credit Account in excess of the amounts then held in the Letter of Credit Account. The Administrative Agent shall have no duty to inquire or investigate whether any Issuing Bank is entitled to receive the funds requested in the applicable Withdrawal Request, and shall not be deemed to have any knowledge as to whether or not any such Withdrawal Request is permitted to be given.

(iv) The Borrower shall pay to the Administrative Agent upon demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance of the Letter of Credit Account.

(v) For the avoidance of doubt, all Term Loans are Loans for all purposes hereunder and, notwithstanding that the proceeds of such Term Loans are held in the Letter of Credit Account, shall bear interest in accordance with this Agreement and shall be subject to all other terms and provisions of this Agreement and the other Loan Documents. No Lender shall have any obligation to reimburse any Issuing Bank with respect to any LC Disbursement to the extent that the Borrower does not satisfy its obligations under Section 2.07(e)(i) above.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in Section 2.07(e) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or any Letter of Credit Agreement, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.07(f), constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor any Issuing Bank, nor any of their Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the applicable Issuing Bank; *provided* that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised all requisite care in each such

determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, each Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. Each Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Each Issuing Bank shall promptly notify the Borrower by telephone (confirmed by facsimile or e-mail (with a copy to the Administrative Agent)) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If any Issuing Bank shall make any LC Disbursement, then, until the Borrower shall have reimbursed such Issuing Bank for such LC Disbursement (either with its own funds or funds withdrawn from the Letter of Credit Account), the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Loans. Interest accrued pursuant to this Section 2.07(h) shall be for the account of the applicable Issuing Bank.

(i) Replacement of any Issuing Bank. Any Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent (acting at the direction of the Required Lenders), the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of any Issuing Bank. At the time any such replacement becomes effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 3.05(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor and/or to any previous and/or existing Issuing Bank, as the context shall require. After the replacement of any Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization.

(i) Establishment of Letter of Credit Account. The Administrative Agent shall establish the Letter of Credit Account.

(ii) Deposits in Letter of Credit Account. The Letter of Credit Account shall be funded by the Borrower (x) on the Closing Date from the proceeds of the

Initial Term Loans advanced pursuant to Section 2.01(b), and (y) if established, from the proceeds of the Incremental Term Loans on the date such Loans are funded.

(iii) Withdrawals from and Closing of Letter of Credit Account. Amounts on deposit in the Letter of Credit Account shall be withdrawn and distributed as follows:

(A) in accordance with Section 2.07(e) above;

(B) in accordance with Section 2.07(m) below; and

(C) upon the LC Maturity Date: (1) if the Administrative Agent has received written notice from each Issuing Bank that all Letters of Credit issued by such Issuing Bank have expired or been cancelled or that a "backstop" letter of credit or other cash collateralization thereof at [103.0]% of the value of such outstanding Letter of Credit pursuant to arrangements reasonably satisfactory to such Issuing Bank has been provided to such Issuing Bank (such written notice, an "**LC Termination Notice**"), the Administrative Agent shall, unless otherwise directed by the Required Lenders, withdraw from the Letter of Credit Account the aggregate amount then on deposit therein and apply such amounts to repayment of the Secured Obligations in the order of application set forth in Section 10.02(c), or (2) if the Administrative Agent has not received such LC Termination Notice, the Administrative Agent shall withdraw from the Letter of Credit Account the aggregate amount then on deposit therein that is equal to [103.0]% of the face amount of Letters of Credit then outstanding and disburse such amounts in accordance with a written direction from the Issuing Banks (or, in the absence of such written direction, the Borrower and the Lenders hereby agree that the Administrative Agent may (x) retain such amounts on deposit in the Letter of Credit Account, for the benefit of the Secured Parties, until such time as (A) the Administrative Agent has received a LC Termination Notice or written direction from the Issuing Banks or (B) a court order has been issued by a court of competent jurisdiction directing the manner in which the Administrative Agent shall distribute the proceeds in the Letter of Credit Account or (y) interplead the manner in which the proceeds in the Letter of Credit Account shall be distributed in any court of competent jurisdiction and (ii) waives any and all claims and causes of action against the Collateral Agent for taking any actions permitted by the immediately preceding clause (x)).

(iv) Except as otherwise provided in clause (iii) above amounts in the Letter of Credit Account may not be withdrawn by the Borrower or used for any purpose other than the reimbursement of the Issuing Banks or repayment of the Secured Obligations hereunder.

(v) The Borrower hereby grants to the Administrative Agent, for the benefit of the Issuing Banks and the other Secured Parties, an exclusive security interest in and Lien on such account and all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in such account, all deposits or wire transfers made thereto, any and all proceeds, products, accessions, rents, profits, income and benefits therefrom, and any substitutions and replacements therefor.

(vi) The Borrower's obligation to deposit amounts pursuant to this Section 2.07(j) shall be absolute and unconditional, without regard to whether any beneficiary of any Letter of Credit has attempted to draw down all or a portion of such amount under the terms of a Letter of Credit, and, to the fullest extent permitted by applicable law, shall not be subject to any defense or be affected by a right of set-off, counterclaim or recoupment which the Borrower or any of its Subsidiaries may now or hereafter have against any such beneficiary, any Issuing Bank, the Administrative Agent, the Lenders or any other Person for any reason whatsoever. Such deposit shall be held as collateral securing the payment and performance of the Borrower's and the Guarantors' obligations under this Agreement and the other Loan Documents. Subject to Sections 2.07(m), the Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Such deposits shall not bear interest.

(k) Applicability of ISP. Unless otherwise expressly agreed by any Issuing Bank and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, no Issuing Bank shall be responsible to the Borrower for, and such Issuing Bank's rights and remedies against the Borrower shall not be impaired by, any action or inaction of such Issuing Bank required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law or any order of a jurisdiction where such Issuing Bank or the beneficiary is located, the practice stated in the ISP or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(l) Calculation of Maximum Stated Amount. For all purposes of this Agreement, the amount of a Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at the time of determination.

(m) Withdrawals of Funds from the Letter of Credit Account by the Borrower.

(i) By delivery of a Letter of Credit Account Withdrawal Notice to the Administrative Agent and each Issuing Bank at least five (5) Business Days prior

to the date of a requested withdrawal from the Letter of Credit Account, the Borrower may request an amount set forth in such Letter of Credit Account Withdrawal Notice (not to exceed in the aggregate, together with all other withdrawals made pursuant to Letter of Credit Account Withdrawal Notices, the Alternate Cash Collateral Limit) be withdrawn from the Letter of Credit Account and sent to the account of the Borrower specified in such Letter of Credit Account Withdrawal Notice; *provided* that (x) in no event shall the LC Cash Collateralization Amount exceed the Letter of Credit Deposit Amount after giving effect to such withdrawal, and (y) the Alternate Cash Collateral withdrawn from the Letter of Credit Account shall be used by the Borrower and the other Loan Parties either to: (A) cash collateralize the obligations of Loan Parties to the customers, vendors and/or suppliers of the Loan Parties in accordance with Section 9.03(h) and the Alternate Cash Collateral will continue to secure the Secured Obligations on a junior basis for the benefit of the Secured Parties under arrangements reasonably acceptable to the Administrative Agent and the Required Lenders, or (B) to prepay obligations of Loan Parties to the customers, vendors and/or supplier of the Loan Parties and Special Board Approval shall have been obtained with respect to the withdrawal of such proceeds and the utilization thereof for such purpose.

(ii) The Administrative Agent shall deliver a copy of each Letter of Credit Account Withdrawal Notice to the Lenders promptly following receipt thereof.

(iii) Notwithstanding anything to the contrary herein or in any other Loan Document, the Loan Parties acknowledge and agree that the Loan Parties' interests in any Alternate Cash Collateral (if any), including the residual value of such Alternate Cash Collateral or the remaining interests of the Loan Parties therein, will continue to constitute Collateral that secures the Secured Obligations.

(iv) With respect to any Alternate Cash Collateral utilized in accordance with Section 2.07(m)(i)(y)(B), in the event that the Borrower receives any amounts (whether in cash or other property, through exercise of any right of setoff, netting or counterclaim or otherwise) in respect of such Alternate Cash Collateral, the Borrower shall promptly (but not later than two (2) Business Days after receipt thereof) deposit such amount into the Letter of Credit Account.

(v) On the date set forth in the applicable Letter of Credit Account Withdrawal Notice (the "Withdrawal Date"), the Administrative Agent shall disburse funds from the Letter of Credit Account in an aggregate amount equal to the amount specified in such Letter of Credit Account Withdrawal Notice to the account of the Borrower specified in such Withdrawal Request, unless the Administrative Agent has received a Withdrawal Suspension Notice from the Required Lenders or the Issuing Bank prior to 10:00 a.m., New York City time, on such Withdrawal Date (and a Withdrawal Suspension Termination Notice has not been received by the Administrative Agent with respect to such Withdrawal Suspension Notice prior to 10:00 a.m., New York City time on such Withdrawal

Date). If the Administrative Agent has received a Withdrawal Suspension Notice from the Required Lenders or the Issuing Bank prior to 10:00 a.m., New York City time, on the applicable Withdrawal Date, the Administrative Agent shall not honor the request set forth in the applicable Letter of Credit Account Withdrawal Notice; *provided, however,* that the Administrative Agent shall not be liable for (i) any disbursements pursuant to instructions from the Borrower or (ii) irrevocable electronic funds transfers or wire transfers that are subject to cut-off times, in each case, that were processed or initiated prior to receipt of such Withdrawal Suspension Notice. Any Withdrawal Suspension Notice received by the Administrative Agent from the Required Lenders or an Issuing Bank shall remain in effect until such time, if any, as the Administrative Agent shall have received a written notice from the Required Lenders or the applicable Issuing Bank, as the case may be, (x) referencing the applicable Letter of Credit Account Withdrawal Notice and (y) stating that all information relating to the proposed withdrawal from the Letter of Credit Account has been received by the Required Lenders or such Issuing Bank, as applicable, and the Administrative Agent may comply with the withdrawal from the Letter of Credit Account requested in such Letter of Credit Account Withdrawal Notice (such written notice, a "**Withdrawal Suspension Termination Notice**").

(vi) With respect to any disbursement, withdrawal, transfer, or application of funds from the Letter of Credit Account under this Section 2.07(m), the Administrative Agent shall be entitled to conclusively rely upon, and shall be fully protected in relying upon, any Letter of Credit Account Withdrawal Notice submitted by the Borrower as evidence that (i) the withdrawal requested therein is permitted to be made and (ii) all conditions or requirements to such withdrawal have been satisfied (including, if applicable, those set forth in Section 6.02), unless the Administrative Agent has received a Withdrawal Suspension Notice from the Required Lenders or the Issuing Bank prior to 10:00 a.m., New York City time, on such Withdrawal Date (and a Withdrawal Suspension Termination Notice has not been received by the Administrative Agent with respect to such Withdrawal Suspension Notice prior to 10:00 a.m., New York City time on such Withdrawal Date). Notwithstanding anything herein to the contrary, the Administrative Agent shall have no obligation to disburse any amount from the Letter of Credit Account in excess of the lesser of (a) the amounts then held in the Letter of Credit Account or (b) the amount that would cause the LC Cash Collateralization Amount to exceed the Letter of Credit Deposit Amount after giving effect to such withdrawal. The Administrative Agent shall have no duty to inquire or investigate whether the Borrower is entitled to receive the funds requested (or have the funds applied in the manner requested) in the applicable Letter of Credit Account Withdrawal Notice, and shall not be deemed to have any knowledge as to whether or not any such Letter of Credit Account Withdrawal Notice is permitted to be given.

Section 2.08 Extension of Maturity Date.[6]

(a) The Borrower may, upon written notice to the Administrative Agent (an "**Extension Request**"), which shall promptly notify the applicable Lenders, request one or more extensions of the maturity date applicable to the Term Loans of a given tranche (each, an "**Existing Term Loan Tranche**" and the extended Loans of such Class, the "**Extended Term Loans**") then in effect (such existing maturity date applicable to any tranche of Term Loans being the "**Existing Maturity Date**") to a date specified in such Extension Request.

(b) Each Extension Request shall specify the date on which the Borrower proposes that the extension shall be effective. Within the time period specified in such Extension Request, each applicable Lender shall notify the Administrative Agent whether it consents to such extension (which consent may be given or withheld in such Lender's sole and absolute discretion). Any Lender not responding within the above time period shall be deemed not to have consented to such extension. The Administrative Agent shall promptly notify the Borrower of such Lenders' responses.

(c) The maturity date applicable to any tranche of Term Loans shall be extended only with respect to such Existing Term Loan Tranche held by such Lenders that have consented thereto (the Lenders providing Term Loans that so consent being the "**Extending Lenders**" and the Lenders providing Term Loans that declined being the "**Non-Extending Lenders**") (it being understood and agreed that, except for the consents of Extending Lenders no other consents shall be required hereunder for such extensions). If so extended, the scheduled maturity date with respect to the Term Loans of the relevant tranche held by the Extending Lenders shall be extended to the date specified in the Extension Request, which shall become the new maturity date of the applicable Term Loans (such maturity date for the Loans so affected, the "**Extended Maturity Date**"). The Administrative Agent shall promptly confirm to the applicable Extending Lenders and Non-Extending Lenders such extension, specifying the effective date of such extension (the "**Extension Effective Date**"), the Existing Maturity Date applicable to the Non-Extending Lenders, and the Extended Maturity Date (after giving effect to such extension) applicable to the Extending Lenders.

(d) The proposed terms of the Extended Term Loans to be established shall (x) be identical as offered to each Lender under the applicable tranche of Term Loans and (y) be identical to the Term Loans under the Existing Term Loan Tranche from which such Extended Term Loans are to be amended, except that:

(i) the maturity date of the Extended Term Loans shall be later than the maturity date of the applicable Existing Term Loan Tranche;

(ii) all or any of the scheduled amortization payments of principal of the Extended Term Loans may be delayed to later dates than the scheduled amortization payments of principal of the Term Loans of such Existing Term Loan Tranche, to the extent provided in the applicable Extension Amendment;

[6] Mechanics for extension of Revolving Commitments TBD.

(iii) the All-In-Yield with respect to the Extended Term Loans (whether in the form of interest rate margin, upfront fees, original issue discount or otherwise) may be different than the All-In-Yield for the Loans of such Existing Term Loan Tranche, in each case, to the extent provided in the applicable Extension Amendment;

(iv) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the final maturity date of the Loans held by the Non-Extending Lenders that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Term Loans); and

(v) Extended Term Loans may have call protection as may be agreed by the Borrower and the Extending Lenders; provided that no Extended Term Loans may be optionally prepaid prior to the date on which all Loans with an earlier final stated maturity (including Loans under the Existing Term Loan Tranche from which they were amended) are repaid in full, unless such optional prepayment is accompanied by a *pro rata* optional prepayment of such other Loans.

(e) As a condition precedent to such extension, the Borrower shall deliver to the Administrative Agent a certificate of the Borrower dated as of the Extension Effective Date, signed by a Responsible Officer of the Borrower certifying that, before and after giving effect to such extension, the representations and warranties made by any Loan Party in this Agreement and any Loan Document that are qualified by materiality or Material Adverse Effect shall be true and correct, and the representations that are not so qualified shall be true and correct in all material respects, in each case on and as of the Extension Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case any such representation and warranty that is qualified by materiality or Material Adverse Effect shall be true and correct as of such earlier date and any such representation and warranty that is not so qualified shall be true and correct in all material respects as of such earlier date, and no Default exists or will exist as of the Extension Effective Date.

(f) Notwithstanding anything to the contrary herein, the Borrower shall have the right, at any time after any applicable Extension Effective Date and prior to any applicable Existing Maturity Date, at the Borrower's sole expense and effort, upon notice to such Non-Extending Lender and the Administrative Agent, to require each such Non-Extending Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 12.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), *provided* that (i) the Borrower shall have received the prior written consent of the Administrative Agent (to the extent such consent is required pursuant to Section 12.04), which consent(s) shall not unreasonably be withheld or delayed, (ii) each Non-Extending Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), and (iii) the Borrower or such assignee shall have paid to the Administrative Agent the processing and recordation fee specified in Section 12.04(b)(iv). Any such replacement Lender shall for all purposes constitute an Extending Term Lender.

(g) Notwithstanding the terms of Section 12.02, the Borrower and the Administrative Agent shall be entitled (without the consent of any other Lenders except to the extent required under subsection (c) above) to enter into any amendments (each an "**Extension Amendment**") to this Agreement, in form and substance satisfactory to the Administrative Agent, that the Administrative Agent believes are necessary to appropriately reflect, or provide for the integration of, any extension of the maturity date and other amendments applicable to any Class of Loans pursuant to this Section 2.08.

(h) With respect to all extensions consummated by the Borrower pursuant to this Section 2.08, no Extension Request is required to be in any minimum amount or any minimum increment; provided that the Borrower may at its election specify as a condition to consummating any such extension that a minimum amount (to be determined and specified in the relevant Extension Request in the Borrower's sole discretion and which may be waived by the Borrower) of Term Loans of any or all applicable tranches be tendered. The Administrative Agent and the Lenders hereby consent to the transactions contemplated by this Section 2.08 (including, for the avoidance of doubt, the payment of any interest, fees, closing payments or premium in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Request) and hereby waive the requirements of any provision of this Agreement or any other Loan Document that may otherwise prohibit any such extension or any other transaction contemplated by this Section. If the aggregate principal amount of Term Loans in respect of which Lenders shall have accepted the relevant Extension Request shall exceed the maximum aggregate principal amount of Term Loans offered to be extended by the Borrower pursuant to such Extension Request, then the Term Loans of such Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Extension Request.

(i) At no time shall there be tranches of Loans created that have more than three (3) different maturity dates.

ARTICLE III
PAYMENTS OF PRINCIPAL AND INTEREST; PREPAYMENTS; FEES

Section 3.01 Repayment of Loans.

(a) Term Loans. If not sooner paid, the Borrower shall pay the principal amount of any outstanding Term Loans, together with accrued interest thereon, and the Call Premium applicable thereto, on the Termination Date.

(b) Revolving Loan. If not sooner paid, the Borrower shall pay the principal amount of any outstanding Revolving Loans, together with accrued interest thereon, and the Call Premium applicable thereto, on the Termination Date.

Section 3.02 Interest.

(a) ABR Loans. The Loans comprising each ABR Borrowing shall bear interest at an annual rate equal to the sum of (i) the Alternate Base Rate *plus* (ii) the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(b) Eurodollar Loans. The Loans comprising each Eurodollar Borrowing shall bear interest at an annual rate equal to the sum of (i) the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing *plus* (ii) the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(c) Post-Default Rate. Notwithstanding the foregoing, if an Event of Default has occurred and is continuing, or if any principal of or interest on any Loan or any fee or other amount payable by the Borrower or any other Loan Party hereunder or under any other Loan Document is not paid when due, whether at stated maturity, upon acceleration or otherwise, then all Loans outstanding, and such overdue amount, shall bear interest, after as well as before judgment, at a rate per annum equal to two percent (2%) *plus* (i) when used with respect to obligations other than Loans, the interest rate applicable to ABR Loans as provided in Section 3.02(a), and (ii) when used with respect to Loans, the rate otherwise applicable to such Loans but, in each case, in no event to exceed the Highest Lawful Rate.

(d) Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and on the Termination Date of such Loan; *provided* that (1) interest accrued pursuant to Section 3.02(c) shall be payable on demand, (2) in the event of any repayment or prepayment of any Loan (other than an optional prepayment of an ABR Loan prior to the Termination Date of such Loan), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and (3) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) Interest Rate Computations. All interest hereunder shall be computed on the basis of a year of 360 days, unless such computation would exceed the Highest Lawful Rate, in which case interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year), except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error, and be binding upon the parties hereto.

Section 3.03 Alternate Rate of Interest.

(a) If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(i) the Required Lenders or the Administrative Agent determine (which determination shall be conclusive absent manifest error) that:

(A) deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount, currency and Interest Period of such Eurodollar Loan, or

(B) adequate and reasonable means do not exist for ascertaining the LIBO Rate for such Interest Period; or

(ii) the Administrative Agent is advised by the Required Lenders that the LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall promptly give written notice thereof to the Borrower and the Lenders and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, which the Administrative Agent agrees promptly to do, any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and such Borrowing shall be continued as, or converted to, an ABR Borrowing (in the case of any conversion to an ABR Borrowing, on the last day of the Interest Period applicable thereof).

(b) If at any time the Required Lenders or the Administrative Agent determine (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (a)(i)(A) or (B) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a)(i)(A) or (B) have not arisen but either (w) the supervisor for the administrator of the LIBO Rate has made a public statement that the administrator of the LIBO Rate is insolvent (and there is no successor administrator that will continue publication of the LIBO Rate), (x) the administrator of the LIBO Rate has made a public statement identifying a specific date after which the LIBO Rate will permanently or indefinitely cease to be published by it (and there is no successor administrator that will continue publication of the LIBO Rate), (y) the supervisor for the administrator of the LIBO Rate has made a public statement identifying a specific date after which the LIBO Rate will permanently or indefinitely cease to be published or (z) the supervisor for the administrator of the LIBO Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Rate may no longer be used for determining interest rates for loans (in the case of any such clause (b)(i) or (ii), an "**Alternative Interest Rate Election Event**"), then the Administrative Agent (at the direction of, and subject to the consent of, the Required Lenders) and the Borrower shall endeavor to establish an alternate rate of interest to the LIBO Rate that (x) gives due consideration to the then prevailing market convention for determining a rate of interest for leveraged syndicated loans in the United States at such time and (y) is a rate for which the Administrative Agent has indicated in writing to the Lenders (which includes email) that it is able to calculate and administer, and the Administrative Agent, the Required Lenders and the Borrower shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Margin) (and the Lenders hereby (A) authorize and direct the Administrative Agent to execute and deliver any such amendment in respect of which the Required Lenders have indicated in writing to the Administrative Agent (which may be via email) that such amendment (and the alternate interest rate specified therein) is satisfactory to the Required Lenders and (B) acknowledge and agree that the Administrative Agent shall be entitled to all of the exculpations and indemnifications provided for in this Agreement in favor of the Administrative Agent in executing and delivering any such amendment). To the extent an alternate rate of interest is adopted as contemplated hereby, the approved rate shall be applied in a manner consistent with prevailing market convention; provided that, to the extent such prevailing market convention is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise mutually determined in good faith by the

Administrative Agent and the Borrower. From such time as an Alternative Interest Rate Election Event has occurred and continuing until an alternate rate of interest has been determined in accordance with the terms and conditions of this paragraph (but, in the case of the circumstances described in clause (ii) of the first sentence of this Section 3.03(b), only to the extent the LIBO Rate for such Interest Period is not available or published at such time on a current basis), (x) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Loan shall be ineffective, and (y) if any Borrowing Request requests a Eurodollar Loan, such Borrowing shall be made as an ABR Loan, in each case determined without giving effect to clause (c) of the Alternative Base Rate.

Section 3.04 Prepayments.

(a) Optional Prepayments.

(i) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with Section 3.04(a)(ii).

(ii) The Borrower shall notify the Administrative Agent by facsimile or e-mail of any prepayment hereunder (A) in the case of prepayment of a Eurodollar Borrowing, not later than 12:00 p.m., New York City time, three (3) Business Days before the date of prepayment, or (B) in the case of prepayment of an ABR Borrowing, not later than 12:00 p.m., New York City time, one (1) Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date (which shall be a Business Day), the Class of Loans to be prepaid and the principal amount of each Borrowing or portion thereof to be prepaid; *provided*, that a notice of prepayment may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied (provided that the failure of such condition shall not relieve the Borrower from its obligations under Section 5.02 in respect thereof). Promptly following receipt of any such notice, the Administrative Agent shall advise the applicable Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an aggregate amount that is an integral multiple of $500,000 and not less than $1,000,000, and shall be applied with respect to each such Class for which prepayments will be made, and in the event there are amortization payments on any Loan, to the remaining scheduled amortization payments of the applicable Loans on a *pro rata* basis. Notwithstanding anything to the contrary contained in this Section 3.04, any Extension Amendment may provide (including on an optional basis as elected by the Borrower) for a less than ratable application of offers to prepay for any Extended Term Loans established thereunder. Prepayments pursuant to Section 3.04(a) shall be accompanied by accrued interest to the extent required by Section 3.02 and the Call Premium (to the extent applicable).

(b) Mandatory Prepayments.

(i) Excess Cash Balance Payments.

(A) Semi-Annual Excess Cash Payments. If, on the last Business Day of any June or December of any fiscal year, there is an Excess Cash Balance, the Borrower shall

apply (each, a "**Semi-Annual ECP**") such Excess Cash Balance within five (5) Business Days following such date in accordance with the provisions of Section 3.04(f)(i).

(B) Monthly Excess Cash Payments. If, on the last Business Day of any calendar month (other than June or December) of any fiscal year, there is an Excess Cash Balance, the Borrower shall apply (each, a "**Monthly ECP**") such Excess Cash Balance within five (5) Business Days following such date to prepay the Revolving Loans in accordance with the provisions of Section 3.04(f)(ii).

(ii) Asset Sale Prepayments. Not later than the third (3rd) Business Day following the receipt of any Net Sale Proceeds by the Borrower or any Subsidiary from any Asset Sale made pursuant to Section 9.11(j), the cumulative amount of which exceeds $350,000 in any fiscal year, the Borrower shall apply an amount equal to 100% of such excess Net Sale Proceeds as a mandatory repayment in accordance with Section 3.04(f)(iii); *provided* that such Net Sale Proceeds shall not be required to be so applied so long as (1) no Event of Default then exists and (2) such Net Sale Proceeds (x) shall be used to purchase or reinvest in Property (other than inventory and working capital) used or to be used in a Related Business within 180 days following the date of such Asset Sale or (y) if the Borrower or any Subsidiary has entered into a binding contract to purchase or reinvest in such Property using such Net Sale Proceeds during such 180-day period and such Net Sale Proceeds are so used within 90 days after the expiration of such 180-day period; *provided, further*, that if all or any portion of such Net Sale Proceeds not required to be so applied as provided above in this Section 3.04(b)(ii) are not so reinvested within such 180-day period, or the following 90-day period as applicable (or such earlier date, if any, as the Borrower or relevant Subsidiary determines not to reinvest the Net Sale Proceeds from such Asset Sale as set forth above), such remaining portion shall be applied on the last day of such period (or such earlier date, as the case may be) as provided above in this Section 3.04(b)(ii) without regard to the preceding proviso.

(iii) Recovery Event Prepayments. Not later than the third (3rd) Business Day following the receipt of any Net Cash Proceeds by the Borrower or any Subsidiary from any Recovery Event, the cumulative amount of which exceeds $350,000 in any fiscal year, the Borrower shall apply an amount equal to 100% of such excess Net Cash Proceeds from such Recovery Event as a mandatory repayment in accordance with the requirements of Section 3.04(f)(iii); *provided* that so long as no Event of Default then exists, such Net Cash Proceeds shall not be required to be so applied to the extent that such Net Cash Proceeds (x) shall be used to replace or restore any Property in respect of which such Net Cash Proceeds were paid within 180 days following the date of the receipt of such Net Cash Proceeds or (y) if the Borrower or any Subsidiary has entered into a binding contract to replace or restore any Property using such Net Cash Proceeds during such 180-day period and such Net Cash Proceeds are so used to replace or restore any Property within 90 days after the expiration of such 180-day period; *provided, further*, that if all or any portion of such Net Cash Proceeds are not so used within 180 days after the date of the receipt of such Net Cash Proceeds, or the following 90-day period as provided above in this Section 3.04(b)(iii) (or such earlier date, if any, as the Borrower or relevant Subsidiary determines not to reinvest the Net Cash Proceeds relating to such Recovery Event as set forth above), such remaining portion shall be applied on the last day of such period (or such earlier date, as the case may be) as provided above in this Section 3.04(b)(iii) without regard to the proviso or the immediately preceding proviso.

(iv) Equity Issuance or Debt Incurrence Prepayments. Upon any Equity Issuance not otherwise prohibited pursuant to the terms of this Agreement or any Debt Incurrence, an amount equal to 100% of the Net Cash Proceeds from such Equity Issuance or Debt Incurrence, as applicable, shall be applied on the date of such Equity Issuance or Debt Incurrence, as a mandatory prepayment in accordance with the requirements of Section 3.04(f)(iii);

(v) Extraordinary Receipts. Not later than the third (3rd) Business Day following the receipt by the Borrower or any Subsidiary of any Net Cash Proceeds from any Extraordinary Receipt in excess of $350,000, the Borrower shall apply an amount equal to 100% of such excess Net Cash Proceeds as a mandatory repayment in accordance with the requirements of Section 3.04(f)(iii).

(vi) Revolving Exposures. If, as of any date (including after giving effect to any termination or reduction of the Revolving Commitments pursuant to Section 2.06), the total Revolving Exposures exceeds the total Revolving Commitments, then the Borrower shall prepay on such date the Revolving Loans in an aggregate principal amount equal to such excess.

(c) Accrued Interest; Call Premium. All prepayments of Term Loans made pursuant to this Section 3.04 shall include (i) accrued and unpaid interest on such Term Loans as of such prepayment date and (ii) the Call Premium (if any) with respect to such Term Loans, each of which, shall be paid as set forth in Section 3.04(f)(i) or (f)(iii) as applicable.

(d) Notice of Prepayment. The Borrower shall notify the Administrative Agent by written notice of any mandatory prepayment under Section 3.04(b) not later than 11:00 a.m., New York City time, two (2) Business Days before the date of such prepayment. Each such notice shall specify the prepayment date (which shall be a Business Day), the Class of Loans to be prepaid the principal amount of each Borrowing or portion thereof to be prepaid and a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof.

(e) No Term Loan Re-Borrowings. Term Loans prepaid pursuant to this Section 3.04 may not be re-borrowed.

(f) Prepayments Waterfall.

(i) Each prepayment made pursuant to Section 3.04(b)(i)(A) shall be applied by the Borrower, (A) *first*, to repay ratably the principal amount of any outstanding Revolving Loans as of such repayment date (without a reduction in the Revolving Commitments), (B) *second*, to redeem the Series B Preferred Units in accordance with the terms of the LLC Agreement as in effect on the Closing Date (or as modified in accordance with the terms hereof); *provided* that no Default or Event of Default has occurred and is continuing or would result therefrom and after giving effect thereto; and (C) *lastly*, to prepay outstanding Term Loans together with accrued and unpaid interest and the Call Premium (if any) as follows: (1) *first*, to payment of the Call Premium (if any) on such Term Loans, (2) *second*, to the payment of accrued and unpaid interest on such Term Loans as of such prepayment date and (3) *third*, to the payment ratably of the principal amount of such Term Loans.

(ii) Each prepayment made pursuant to Section 3.04(b)(i)(B) and (b)(vi) shall be applied by the Borrower to repay the principal amount of any outstanding Revolving Loans (without a reduction in the Revolving Commitments) as of such repayment date.

(iii) Each prepayment made pursuant to Sections 3.04(b)(ii), (b)(iii), (b)(iv) or (b)(v) shall be applied by the Borrower to prepay outstanding Term Loans together with accrued and unpaid interest and the Call Premium (if any) as follows: (1) *first*, to payment of the Call Premium (if any) on such Term Loans, (2) *second*, to the payment of accrued and unpaid interest on such Term Loans as of such prepayment date and (3) *third*, to the payment ratably of the principal amount of such Term Loans.

(iv) In connection with any mandatory prepayments of Revolving Loans pursuant to Section 3.04(b), and subject to clauses (i) and (iii) above, such prepayment shall be applied, *first* ratably to any ABR Borrowings then outstanding, and, *second*, to any Eurodollar Borrowings then outstanding; *provided*, if more than one Eurodollar Borrowing is outstanding, such repayments shall be made to each such Eurodollar Borrowing in order of priority beginning with the Eurodollar Borrowing with the least number of days remaining in the Interest Period applicable thereto and ending with the Eurodollar Borrowing with the most number of days remaining in the Interest Period applicable thereto. In connection with any mandatory prepayments by the Borrower of the Term Loans pursuant to Section 3.04(b), subject to clauses (i) and (iii) above, such prepayments shall be applied: *first*, on a pro rata basis to the outstanding Initial Term Loans and Incremental Term Loans that are not Extended Term Loans, irrespective of the Type of such Term Loans, and *then*, to each tranche of Extended Term Loans in succeeding order of Maturity Date, for application on a pro rata basis to the outstanding Extended Term Loans under such tranche.

(v) If the Borrower is required to make a mandatory prepayment of Eurodollar Borrowings under Section 3.04(b), the Borrower shall have the right, in lieu of making such prepayment in full, to deposit an amount equal to such mandatory prepayment with the Administrative Agent in a non-interest bearing cash collateral account maintained by and in the sole dominion and control of the Administrative Agent. Any amounts so deposited shall be held by the Administrative Agent as collateral for the prepayment of such Eurodollar Rate Loans and shall be applied to the prepayment of the applicable Eurodollar Rate Loans at the end of the current Interest Periods applicable thereto.

(g) Breakage. Notwithstanding anything to the contrary contained herein, each prepayment (optional or mandatory) made under this Section 3.04 shall be made subject to reimbursement of Breakage Costs in accordance with Section 5.02.

Section 3.05 Fees.

(a) Revolving Commitment Fees. The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a commitment fee (the "**Revolving Commitment Fee**"), which shall accrue at 5.00% on the average daily amount of the unused amount of the Commitment of such Revolving Lender during the period from and including the date of this Agreement to but excluding the Termination Date. Revolving Commitment Fees accrued shall be payable in arrears on the last Business Day of March, June,

September and December of each year and on the Termination Date, commencing on the first such date to occur after the date hereof. The Revolving Commitment Fee shall be computed on the basis of a year of 360 days, unless such computation would exceed the Highest Lawful Rate, in which case interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For avoidance of doubt, the "unused amount" of the Revolving Commitment of any Lender shall be determined by subtracting such Lender's Revolving Exposure on the date of determination from such Lender's Revolving Commitment on such date of determination.

(b) Letter of Credit Fees. The Borrower agrees to pay directly to each applicable Issuing Bank, for its own account, (i)(x) [a fronting fee equal to [●]% of the stated amount of each Existing Letter of Credit deemed issued by it hereunder], and (y) a fronting fee equal to [●]% of the stated amount of each other Letter of Credit issued by it hereunder, payable in arrears on the last day of March, June, September and December of each year and upon the Termination Date, and (ii) its standard fees with respect to the issuance, amendment, transfer, renewal or extension of any Letter of Credit issued by it or processing of drawings thereunder payable upon the effectiveness thereof. Fronting fees shall be payable in advance (1) with respect to any Existing Letters of Credit deemed issued hereunder, on the Closing Date, and (2) with respect to any other Letter of Credit, on the date of issuance of such Letter of Credit. Any other fees payable to any Issuing Bank pursuant to this Section 3.05(b) shall be payable within ten (10) days after demand or as otherwise agreed between the Borrower and the Issuing Bank. All fronting fees shall be computed on the basis of a year of 360 days, unless such computation would exceed the Highest Lawful Rate, in which case interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) Administrative Agent Fees. The Borrower agrees to pay to the Administrative Agent, for its own account, the fees payable in the amounts and at the times set forth in the Fee Letter. The Borrower shall also pay to the Lenders such fees as shall have been separately agreed upon in writing between the Borrower and the Lenders in the amounts and at the times so specified.

(d) Upfront Payment. Subject to Section 3.05(f), on the Closing Date, the Borrower shall pay directly to each Lender that is an Eligible Investor a payment ("**Upfront Payment**") in the form of Series B Preferred Units with an initial liquidation preference equal to 3.00% of such Lender's aggregate Commitments in effect on the Closing Date.

(e) Oversubscription Payment. Subject to Section 3.05(f), on the Closing Date, the Borrower shall make a payment (an "**Oversubscription Payment**") directly to each Oversubscribing Lender in the form of Series B Preferred Units with an initial liquidation preference equal to such Oversubscribing Lender's Oversubscription Payment Amount.

(f) Eligible Investor Acknowledgement. Each Lender acknowledges that: (i) payment of the Upfront Payment and the Oversubscription Payment will be available to such Lender, subject to the terms and conditions hereof, only if such Lender is an Eligible Investor, and (ii) if such Lender is not eligible to receive Series B Preferred Units because it is not an

Eligible Investor, such ineligibility shall not relieve such Lender of its obligations (including its Commitments) hereunder and such Lender shall not be entitled to any Upfront Payment or Oversubscription Payment, whether payable in Series B Preferred Units or other consideration.

ARTICLE IV
PAYMENTS; PRO RATA TREATMENT; SHARING OF SET-OFFS

Section 4.01 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Payments by the Borrower. The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees, or reimbursement of LC Disbursements, or amounts payable under Section 5.01, Section 5.02, Section 5.03 or otherwise) prior to 11:00 a.m., New York City time, on the date when due, in immediately available funds, without defense, deduction, recoupment, set-off or counterclaim. Fees, once paid, shall be fully earned and shall not be refundable under any circumstances. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to the account of the Administrative Agent specified from time to time for receipt of payments, except payments to be made directly to the applicable Issuing Bank as expressly provided herein and except that payments pursuant to Section 5.01, Section 5.02, Section 5.03 and Section 12.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day (provided, that if any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day and the result of such extension would be to extend such payment into another calendar month, such payment shall be made on the immediately preceding Business Day), and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) Application of Insufficient Payments. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest, the Call Premium (if applicable) and fees then due hereunder, such funds shall be applied (i) first, towards payment of the Call Premium and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of the Call Premium and fees then due to such parties, (ii) second, towards payment of interest then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest then due to such parties and (iii) third, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and other such obligations greater than its *pro rata* share thereof as provided herein, then the Lender receiving such greater proportion shall (i) notify the Administrative Agent of such fact, and (ii) purchase (for cash at

face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; *provided* that (A) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (B) the provisions of this Section 4.01 shall not be construed to apply to (1) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (2) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant. Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation.

Section 4.02 Payments by the Borrower; Presumptions by the Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or an Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the applicable Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the applicable Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such Issuing Bank, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

Section 4.03 Certain Deductions by the Administrative Agent. If any Lender shall fail to make any payment required to be made by it pursuant to Section 4.02, Section 12.03(c) or otherwise hereunder then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (a) apply any amounts thereafter received by the Administrative Agent for the account of such Lender and for the benefit of the Administrative Agent to satisfy such Lender's obligations hereunder until all such unsatisfied obligations are fully paid and/or (b) hold any such amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender hereunder, in the case of each of (a) and (b) above, in any order as determined by the Administrative Agent in its discretion. If at any time prior to the acceleration or maturity of the Loans, the Administrative Agent receives any payment in respect of principal of a Loan while one or more Defaulting Lenders is a party to this Agreement, the Administrative Agent shall apply such payment *first* to the Borrowing(s) for which any such Defaulting Lender has failed to fund its *pro rata* share until such time as such Borrowing(s) are paid in full. After acceleration or maturity of the Loans, all principal will be applied ratably as provided in Section 10.02(c).

Section 4.04 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then so long as such Lender is a Defaulting Lender the Loans and Commitments held by such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 12.02), *provided* that any waiver, amendment or modification requiring the consent of all Lenders or each adversely affected Lender which affects such Defaulting Lender differently than all other Lenders or all other adversely affected Lenders, as the case may be, shall require the consent of such Defaulting Lender.

ARTICLE V
INCREASED COSTS; BREAK FUNDING PAYMENTS; TAXES; ILLEGALITY

Section 5.01 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Adjusted LIBO Rate);

(ii) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement, or any Eurodollar Loan made by it (except for Indemnified Taxes, Other Taxes covered by Section 5.03 or Connection Income Taxes and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender); or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Loans made by such Lender; and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount), then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law regarding capital or liquidity requirements and affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender, or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in Sections 5.01(a) or (b) and delivered to the Borrower (with a copy to the Administrative Agent) shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Effect of Failure or Delay in Requesting Compensation. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 5.01 shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender pursuant to this Section 5.01 for any increased costs incurred or reductions suffered more than 365 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; *provided, further*, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 365-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 5.02 Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan into an ABR Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 5.04(b), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event ("**Breakage Costs**"). In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for Dollar deposits of a comparable amount and period from other banks in the eurodollar market.

A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 5.02 shall be delivered to the Borrower (with a copy to the Administrative Agent) and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

Section 5.03 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower or any Guarantor under any Loan Document shall be made free and

clear of and without deduction or withholding for any Taxes, except as otherwise required by applicable law; *provided* that if the Borrower or any Guarantor shall be required by applicable law to deduct any Taxes from such payments, then (i) if such Taxes are Indemnified Taxes or Other Taxes, the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 5.03(a)), the Administrative Agent or applicable Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower or such Guarantor shall make such deductions and (iii) the Borrower or such Guarantor shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of Section 5.03(a), the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent and each Lender, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 5.03) payable or paid by the Administrative Agent or such Lender or required to be withheld or deducted from a payment to the Administrative Agent or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability under this Section 5.03 delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.04(d)(ii) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower or a Guarantor to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a

receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments made under this Agreement or any other Loan Document shall deliver to the Withholding Agent (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Withholding Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Withholding Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Withholding Agent as will enable the Withholding Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution, and submission of such documentation (other than such documentation set forth in Sections 5.03(f)(ii)(A) and 5.03(f)(ii)(B) and Section 5.03(g) below) shall not be required if in the Lender's reasonable judgment such completion, execution, or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a "**United States person**" as defined in section 7701(a)(30) of the Code,

(A) any Lender that is a "**United States person**" as defined in section 7701(a)(30) of the Code shall deliver to the Withholding Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Withholding Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from United States federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Withholding Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Withholding Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E (as applicable) establishing an exemption from or reduction of, United States federal withholding tax pursuant to the "**interest**" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E (as applicable) establishing an exemption from, or reduction of, United States

federal withholding tax pursuant to the "**business profits**" or "**other income**" article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a "**bank**" within the meaning of section 881(c)(3)(A) of the Code, a "**10 percent shareholder**" of the Borrower within the meaning of section 871(h)(3)(B) of the Code, or a "**controlled foreign corporation**" described in section 881(c)(3)(C) of the Code (a "**U.S. Tax Compliance Certificate**"), and (y) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E (as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E (as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner; and

(5) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Withholding Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Withholding Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Withholding Agent to determine the withholding or deduction required to be made.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification, or promptly notify the Withholding Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 5.03, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 5.03 with respect to the Indemnified

Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the Administrative Agent or any Lender be required to pay any amount to the Borrower pursuant to this paragraph (g) the payment of which would place the Administrative Agent or such Lender in a less favorable net after-Tax position than the Administrative Agent or such Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 5.03 shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

(h) FATCA. If a payment made to a Lender under this Agreement would be subject to United States federal withholding tax imposed by FATCA if such Lender fails to comply with the applicable reporting requirements of FATCA (including those contained in section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Withholding Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Withholding Agent, such documentation prescribed by applicable law (including as prescribed by section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Withholding Agent as may be necessary for the Withholding Agent to comply with its obligations under FATCA, to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for the purposes of this Section 5.03(h), "**FATCA**" shall include any amendments made to FATCA after the date of this Agreement.

(i) Survival. Each party's obligations under this shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under this Agreement or any other Loan Document.

Section 5.04 Mitigation Obligations; Replacement of Lenders.

(a) Designation of Different Lending Office. If any Lender requests compensation under Section 5.01, or requires the Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 5.01 or Section 5.03, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby

agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 5.01, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.04(b)), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (i) the Borrower shall have paid to the Administrative Agent the processing and recordation fee specified in Section 12.04(b)(iv), (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.04(c) or Section 5.02), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (iii) in the case of any such assignment resulting from a claim for compensation under Section 5.01 or payments required to be made pursuant to Section 5.03, such assignment will result in a reduction in such compensation or payments thereafter, (iv) such assignment does not conflict with applicable law. and (v) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Notwithstanding the foregoing, a Lender shall not be required to make any such assignment and delegation if such Lender or any of its Affiliates is a Secured Hedging Agreement Counterparty with any outstanding Secured Hedging Agreements with any Loan Party (to the extent obligations under such Secured Hedging Agreements constitute Secured Obligations), unless on or prior to the effectiveness of such assignment, all such Secured Hedging Agreements have been terminated or novated to another Person and such Lender or its Affiliate, as the case may be, has received payment of all amounts, if any, payable to it in connection with such termination or novation.

Section 5.05 Illegality. Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Lender or its applicable lending office to honor its obligation to make or maintain Eurodollar Loans either generally or having a particular Interest Period hereunder, then (a) such Lender shall promptly notify the Borrower and the Administrative Agent thereof and such Lender's obligation to make such Eurodollar Loans shall be suspended (the "**Affected Loans**") until such time as such Lender may again make and maintain such Eurodollar Loans and (b) all Affected Loans which would otherwise be made by such Lender shall be made instead as ABR Loans (without giving effect to clause (c) of the definition of Alternate Base Rate) (and, if such Lender so requests by notice to the Borrower and the Administrative Agent, all Affected Loans of such Lender then outstanding shall be automatically converted into ABR Loans(without giving effect to clause (c) of the definition of Alternate Base Rate) on the date specified by such Lender in such notice) and, to the extent that

Affected Loans are so made as (or converted into) ABR Loans, all payments of principal which would otherwise be applied to such Lender's Affected Loans shall be applied instead to its ABR Loans.

ARTICLE VI
CONDITIONS PRECEDENT

Section 6.01 Closing Date. The incurrence of the Initial Term Loan hereunder on the Closing Date shall not become effective until each of the following conditions is satisfied (or waived by the Required Initial Lenders in their sole discretion):

(a) The Administrative Agent and the Lenders shall have received all agency fees and all other fees and amounts due and payable on or prior to the Closing Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder (including, without limitation, the reasonable and documented fees and expenses of Arnold & Porter Kaye Scholer LLP, counsel to the Administrative Agent, and Willkie Farr & Gallagher LLP, counsel to the Initial Exit Lenders). The Administrative Agent shall have also received a fully executed copy of the Fee Letter.

(b) Either (i) the Confirmation Order shall have been entered in form and substance reasonably satisfactory to the Required Initial Lenders and shall be in full force and effect and has not been vacated, reversed, modified, amended or stayed, and the "Effective Date" as set forth in the Chapter 11 Plan shall have occurred prior to or simultaneously with the Closing Date and all conditions precedent to the occurrence of such "Effective Date" shall have been satisfied or waived in accordance with the terms thereof or (ii) (x) an order by the Bankruptcy Court approving the Credit Bid Transaction shall have been entered in form and substance reasonably acceptable to the Required Initial Lenders and shall be in full force and effect and has not been vacated, reversed, modified, amended or stayed, and (y) the consummation of the Credit Bid Transaction shall have occurred prior to or simultaneously with the Closing Date and all conditions precedent to the occurrence of such Credit Bid Transaction shall have been satisfied or waived in accordance with the terms thereof, in each case, in form and substance reasonably satisfactory to the Required Initial Lenders with respect to provisions relating to the Exit Credit Facilities, Series A Preferred Units, Series B Preferred Units, and otherwise reasonably satisfactory to the Required Initial Lenders;

(c) [Reserved.]

(d) The Administrative Agent shall have received a certificate of the Secretary or an Assistant Secretary of each Loan Party setting forth (i) resolutions of its Board of Directors with respect to the authorization of such Loan Party to execute and deliver the Loan Documents to which it is a party and to enter into the Transactions contemplated in those documents, (ii) specimen signatures of authorized officers of such Loan Party (A) who are authorized to sign the Loan Documents to which such Loan Party is a party and (B) who will, until replaced by another officer or officers duly authorized for that purpose, act as its representative for the purposes of signing documents and giving notices and other communications in connection with the Loan Documents and the Transactions contemplated hereby, (iii) the Organization Documents of such Loan Party, certified as being true and

complete, and (iv) certificates of good standing (or equivalent) issued by the relevant Governmental Authority of such Loan Party's jurisdiction of formation. The Administrative Agent and the Lenders may conclusively rely on such certificate until the Administrative Agent receives notice in writing from such Loan Party to the contrary.

(e) [Reserved.]

(f) The Administrative Agent and the Required Initial Lenders (or, in the case of clause (ii) below, the applicable Lenders) shall have received duly executed copies or counterparts executed by the Loan Parties (in such number as may be requested by the Required Initial Lenders) of (i) this Agreement, (ii) Notes payable to each Lender that has requested a Note in a principal amount equal to its Commitment as of the Closing Date, (iii) the Security Instruments (other than the Mortgages), (iv) a Notice of Borrowing for the Loans to be borrowed on the Closing Date, (v) the Perfection Certificate and (vi) any other documents or deliverables listed in the Closing Checklist (except any listed as "Post-Closing").

(g) The Administrative Agent and the Required Initial Lenders shall (i) be reasonably satisfied that the Security Instruments create (or will create, upon proper filing, recording or registration) first priority perfected Liens (subject only to Excepted Liens) on all of the tangible and intangible Property of the Loan Parties (other than Property excluded pursuant to the Security Instruments) and (ii) have received certificates, together with undated, blank stock powers for each such certificate, representing all of the issued and outstanding Equity Interests of each of the Loan Parties (other than the Borrower), to the extent certificated.

(h) The Administrative Agent shall have received a customary opinion of Davis Polk & Wardwell LLP, special counsel to the Borrower, in form and substance reasonably satisfactory to the Required Initial Lenders and their counsel.

(i) The Administrative Agent and the Required Initial Lenders shall have received certificates of insurance coverage of the Borrower and the other Loan Parties evidencing that the Borrower and the other Loan Parties are carrying insurance in accordance with Section 7.12.

(j) The Borrower has received all consents and approvals required by Section 7.03.

(k) [Reserved.].

(l) [Reserved.]

(m) The Administrative Agent and the Required Initial Lenders shall have received appropriate termination statements, mortgage releases and such other documentation as shall be necessary to terminate, release or assign to the Administrative Agent all Liens encumbering the Properties of the Borrower and the Subsidiaries, other than Liens permitted by Section 9.03, in each case, in proper form for filing, registration or recordation in the appropriate jurisdictions.

(n) Each document (including any Uniform Commercial Code financing statement) required by this Agreement or under law or reasonably requested by the Administrative Agent or the Required Initial Lenders to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (subject to Excepted Liens), shall be in proper form for filing, registration or recordation.

(o) Since December 16, 2019, there shall not have occurred any event, change, occurrence or circumstance that, individually or in the aggregate, has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Borrower and its Subsidiaries, taken as a whole.

(p) The Administrative Agent and the Required Initial Lenders shall have received a certificate of a Responsible Officer certifying that the conditions contained in this Section 6.01 have been satisfied.

(q) [Reserved.]

(r) The Administrative Agent shall have received from the Loan Parties, to the extent requested by the Lenders or the Administrative Agent, all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering laws, rules and regulations, including the USA Patriot Act.

(s) [Reserved.]

(t) Prior to or substantially concurrently with the deemed funding of the Initial Term Loan, the Chapter 11 Emergence Transactions that are contemplated to occur on or prior to the "Effective Date" as set forth in the Chapter 11 Plan shall have occurred.

Without limiting the generality of the provisions of Section 11.04, for purposes of determining compliance with the conditions specified in this Section 6.01, each Lender that has executed this Agreement as of the Closing Date shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required under this Section 6.01 to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received written notice from such Lender prior to the Closing Date specifying its objection thereto. The Administrative Agent shall notify the Borrower and the Lenders of the Closing Date, and such notice shall be conclusive and binding.

Notwithstanding the foregoing to the extent any security interest in any Collateral (other than any Lien on Collateral that may be perfected by (x) the filing of a financing statement under the Uniform Commercial Code and (y) the delivery of certificates evidencing the Equity Interests required to be pledged pursuant to the Guaranty and Collateral Agreement) is not or cannot be perfected on the Closing Date after the Borrower's use of commercially reasonable efforts to do so, then the perfection of such security interests shall not constitute a condition precedent to the availability of the Loans on the Closing Date, but instead shall be required to be delivered, provided and/or perfected within thirty (30) days after the Closing Date (unless extended by the Administrative Agent) (at the direction of the Required Lenders) or, with respect to the items set forth therein, within the time periods specified on Schedule 8.20.

Section 6.02 Each Subsequent Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing (including the funding of any Revolving Loan or Incremental Term Loan), the obligation of the Administrative Agent to withdraw cash from the Letter of Credit Account pursuant to a Letter of Credit Account Withdrawal Notice, and the obligation of each Issuing Bank to issue, amend, renew or extend any Letter of Credit (each, such Borrowing of Loans, withdrawal from the Letter of Credit Account, or issuance, amendment, renewal or extension of such Letter of Credit, a "**Credit Event**"), in each case, after the Closing Date, is subject to the satisfaction of the following conditions:

(a) At the time of and immediately after giving effect to such Credit Event, no Default or Event of Default shall have occurred and be continuing.

(b) The representations and warranties of the Borrower and the Guarantors set forth in this Agreement and in the other Loan Documents shall be true and correct in all material respects on and as of the date of such Credit Event except that (i) to the extent any such representations and warranties are expressly limited to an earlier date, in which case, on and as of the date of such Credit Event, such representations and warranties shall continue to be true and correct in all material respects as of such specified earlier date, and (ii) to the extent that any such representations and warranties are qualified by materiality, such representations and warranties shall continue to be true and correct in all respects.

(c) Solely with respect to Borrowings of Loans, the Administrative Agent shall have received a Notice of Borrowing in accordance with Section 2.03.

(d) Solely with respect to Borrowings of Revolving Loans, on a Pro Forma Basis, there is no Excess Cash Balance on and as of the date of such Borrowing, after giving effect to such Borrowing and to the application of the proceeds therefrom (as such use of proceeds are certified by the Borrower in the Notice of Borrowing) on or around such date, but in any event, not to exceed five (5) Business Days after such date.

(e) Solely with respect to withdrawals of cash from the Letter of Credit Account pursuant to a Letter of Credit Account Withdrawal Notice, the Administrative Agent and the Issuing Banks shall have timely received a Letter of Credit Account Withdrawal Notice in accordance with Section 2.07(m), and the Administrative Agent shall not have received prior to 10:00 a.m., New York City time, on the applicable Withdrawal Date (i) a written request from any Issuing Bank or the Required Lenders for information of the type described in clause (v) of the definition of "Letter of Credit Account Withdrawal Notice" or (ii) a written objection from any Issuing Bank or the Required Lenders objecting to such Letter of Credit Account Withdrawal Notice on the basis that such withdrawal would fail to comply, on a pro forma basis, with the Loan Documents (any such written request or written objection received by the Administrative Agent under clause (i) or (ii) of this Section 6.02(e) being referred to herein as a "**Withdrawal Suspension Notice**"), unless the Administrative Agent has received a Withdrawal Suspension Termination Notice with respect to such Withdrawal Suspension Notice prior to 10:00 a.m., New York City time on such Withdrawal Date.

(f) Solely with respect to the issuance, amendment, renewal or extension of a Letter of Credit, the Administrative Agent and the applicable Issuing Bank shall have received a

request for a Letter of Credit and related Letter of Credit Agreement in accordance with Section 2.07(b), as applicable.

Each request with respect to a Credit Event and each acceptance of the foregoing shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in Sections 6.02(a) and (b).

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

The Borrower (on behalf of itself and its Subsidiaries), and each Guarantor by its execution of the Guaranty and Collateral Agreement, represents and warrants to the Administrative Agent and the Lenders that (provided, that any representation and warranty made on or as of the Closing Date shall be made after giving effect to the entry of the Confirmation Order and the consummation of the Chapter 11 Emergence Transactions contemplated to occur prior to, on or substantially concurrently with the Closing Date):

Section 7.01 Organization; Powers. Each of the Borrower and its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority, and has all material governmental licenses, authorizations, consents and approvals necessary, to own its assets and to carry on its business as now conducted, and is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, in each case except where failure to have such power, authority, licenses, authorizations, consents, approvals and qualifications could not reasonably be expected to have a Material Adverse Effect.

Section 7.02 Authority; Enforceability. The Transactions are within each Loan Party's corporate powers and have been duly authorized by all necessary corporate and, if required, stockholder action (including, without limitation, any action required to be taken by any class of directors of the Borrower or any other Person, whether interested or disinterested, in order to ensure the due authorization of the Transactions). Each Loan Document to which a Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, as applicable, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 7.03 Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any other third Person (including shareholders or any class of directors, whether interested or disinterested, of the Borrower or any other Person), nor is any such consent, approval, registration, filing or other action necessary for the validity or enforceability of any Loan Document or the consummation of the transactions contemplated thereby, except such as have been obtained or made and are in full force and effect other than (i) the recording and filing of the Security Instruments as required by this Agreement (including with the United States Patent and Trademark Office and United States Copyright Office) and (ii) those third party approvals or consents which, if not made or obtained, would not cause a Default hereunder or could not

reasonably be expected to have a Material Adverse Effect, (b) will not violate (i) any applicable law or regulation, (ii) any Organization Documents of the Borrower or any Subsidiary, or (iii) any order of any Governmental Authority, (c) will not violate or result in a default under any indenture or other agreement regarding Indebtedness of the Borrower or any Subsidiary or give rise to a right thereunder to require any payment to be made by the Borrower or such Subsidiary, (d) will not violate or result in a default under any other agreement or other instrument binding upon the Borrower or any Subsidiary, or its Properties, or give rise to a right thereunder to require any payment to be made by the Borrower or such Subsidiary, other than such violations or defaults which would not cause a Default hereunder, could not reasonably be expected to have a Material Adverse Effect, or do not have an adverse effect on the enforceability of any Loan Documents, and (e) will not result in the creation or imposition of any Lien on any Property of the Borrower or any Subsidiary (other than the Liens created by the Loan Documents).

Section 7.04 Financial Condition; No Material Adverse Change.

(a) The Borrower has heretofore furnished to the Lenders (i) its consolidated balance sheet and statements of income, stockholders equity and cash flows (A) as of and for the fiscal year ended December 31, 2018, audited by its independent public accountants, and (B) as of and for the fiscal quarters and the portions of the fiscal year ended June 30, 2019, and September 30, 2019, certified by its chief financial officer (collectively, the "**Borrower Financial Statements**"), and (ii) the Borrower's "Liquidation Analysis," "Financial Projections" (including the *pro forma* debt structure, projected income statement, projected balance sheet and projected cash flow statement) and "Valuation Analysis", attached as Exhibits B, C and D to the *Disclosure Statement Supplement for First Amended Chapter 11 Plan for Southcross Energy Partners L.P. and Its Affiliated Debtors*, filed in the Chapter 11 Cases on December 16, 2019 (the "**Disclosure Statement Supplement Exhibits**"). The Borrower Financial Statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its Consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP. The Disclosure Statement Supplement Exhibits have been prepared in good faith by the Borrower, based on the assumptions stated therein (which assumptions were and are believed by the Borrower, on the date thereof and the Closing Date, to be reasonable in light of then current conditions and facts then known by the Borrower), are based on the best information available to the Borrower as of the date of delivery thereof, accurately reflect all adjustments required to be made to give effect to the Chapter 11 Emergence Transactions, and present fairly in all material respects the *pro forma* consolidated financial position and results of operations of the Borrower and its Consolidated Subsidiaries as of such date and for such periods, assuming that the Chapter 11 Emergence Transactions have occurred at such dates and at the beginnings of such periods. The representations in this Section 7.04(a), as applicable, are subject, in the case of unaudited financial statements, to normal year-end adjustments and the absence of notes.

(b) Since December 16, 2019, there has been no event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

(c) Neither the Borrower nor any Subsidiary has, on the date hereof after giving effect to the Chapter 11 Emergence Transactions, any Material Indebtedness (including Disqualified Capital Stock) or any contingent liabilities, off-balance sheet liabilities or

partnerships, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments, except as referred to or reflected or provided for in the Borrower Financial Statements or the Disclosure Statement Supplement Exhibits.

(d) The projections regarding the financial performance of the Borrower and its Consolidated Subsidiaries furnished to the Lenders pursuant to Section 8.01(c) have been prepared on a reasonable basis and in good faith by the Borrower and based upon assumptions believed by the Borrower to be reasonable at the time such projections were provided and from the best information then available to the Borrower after reasonable inquiry and reflect the good faith and reasonable estimates of the Borrower of the future financial performance of the Borrower and its Consolidated Subsidiaries and the other information provided therein for the periods therein (it being recognized by the Lenders, however, that projections as to future events are not to be viewed as facts and that actual results during the period(s) covered by such projections may differ from the projected results and that such differences may be material and that neither the Borrower nor any Subsidiary makes any representation that such projections will be realized).

Section 7.05 Litigation. There are no actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any Subsidiary, or any of their Properties (a) not fully covered by insurance (except for normal deductibles) as to which there is a reasonable possibility of an adverse determination that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, or (b) that involve any Loan Document or the Transactions.

Section 7.06 Environmental Matters. Except for such matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) the Borrower and the Subsidiaries and each of their respective Properties and operations thereon are, and within all applicable statute of limitation periods have been, in compliance with all applicable Environmental Laws;

(b) the Borrower and the Subsidiaries have obtained all Environmental Permits required for their respective operations and each of their Properties, with all such Environmental Permits being currently in full force and effect, and none of the Borrower or the Subsidiaries has received any written notice or otherwise has knowledge that any such existing Environmental Permit will be revoked or that any application for any new Environmental Permit or renewal of any existing Environmental Permit will be protested or denied;

(c) there are no claims, demands, suits, orders, inquiries, investigations, requests for information or proceedings concerning any violation of, or any liability (including as a potentially responsible party) under, any applicable Environmental Law that is pending or, to the Borrower's knowledge, threatened against the Borrower or any Subsidiary or any of their respective Properties or as a result of any operations at such Properties;

(d) none of the Properties of the Borrower or any Subsidiary contain or have contained any: (i) hazardous waste management units as defined pursuant to RCRA or any comparable state law; or (ii) sites on or nominated for the National Priority List promulgated pursuant to CERCLA or any state remedial priority list promulgated or published pursuant to any comparable state law;

(e) there has been no Release or, to the Borrower's knowledge, threatened Release of Hazardous Materials at, on, under or from the Borrower's or any Subsidiary's Properties, there are no investigations, remediations, abatements, removals, or monitorings of Hazardous Materials required under applicable Environmental Laws at such Properties and, to the knowledge of the Borrower, none of such Properties are adversely affected by any Release or threatened Release of a Hazardous Material originating or emanating from any other real property;

(f) neither the Borrower nor any Subsidiary has received any written notice asserting an alleged liability or obligation under any applicable Environmental Laws with respect to the investigation, remediation, abatement, removal, or monitoring of any Hazardous Materials at, under, or Released or threatened to be Released from any real properties offsite the Borrower's or any Subsidiary's Properties and, to the Borrower's knowledge, there are no conditions or circumstances that could reasonably be expected to result in the receipt of such written notice;

(g) there has been no exposure of any Person or Property to any Hazardous Materials as a result of or in connection with the operations and businesses of any of the Borrower's or the Subsidiaries' Properties that could reasonably be expected to form the basis for a claim for damages or compensation, and, to the Borrower's knowledge, there are no conditions or circumstances that could reasonably be expected to result in the receipt of notice regarding such exposure; and

(h) the Borrower has provided, or has caused its Subsidiaries to provide, to the Lenders complete and correct copies of all written environmental site assessment reports, investigations, studies, analyses, and correspondence on environmental matters (including matters relating to any alleged non-compliance with or liability under Environmental Laws) that are in any of the Borrower's or the Subsidiaries' possession or control and relating to their respective Properties or operations thereon.

Section 7.07 Compliance with the Laws and Agreements; No Defaults.

(a) Each of the Borrower and each Subsidiary is in compliance with all Governmental Requirements applicable to it or its Property and all agreements and other instruments binding upon it or its Property, and possesses all licenses, permits, franchises, exemptions, approvals and other governmental authorizations necessary for the ownership of its Property and the conduct of its business, in each case except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) [Reserved.]

(c) No Default has occurred and is continuing.

Section 7.08 Investment Company Act. Neither the Borrower nor any Subsidiary is an "investment company" or a company "controlled" by an "investment company," within the meaning of, or subject to regulation under, the Investment Company Act of 1940, as amended.

Section 7.09 Taxes. Except as set forth on Schedule 7.09, each of the Borrower and its Subsidiaries has timely filed or caused to be filed all Income and other material Tax returns and material reports required to have been filed. Each of the Borrower and its Subsidiaries has paid or caused to be paid all material Income and other Taxes required to have been paid by it, except Taxes (i) that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP or (ii) the failure to make payment with respect thereto could not reasonably be expected to result in a Material Adverse Effect. The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of Taxes and other governmental charges are, in the reasonable opinion of the Borrower, adequate. No currently outstanding Tax Lien has been filed against the Borrower, any of the Subsidiaries, or any of their respective Properties, and, to the knowledge of the Borrower, no claim is being asserted against the Borrower, any of the Subsidiaries, or any of their respective Properties with respect to any such Tax or other such governmental charge, in each case, except with respect to Taxes (i) that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP or (ii) the failure to make payment with respect thereto could not reasonably be expected to result in a Material Adverse Effect.

Section 7.10 ERISA.

(a) The Borrower, the Subsidiaries and each ERISA Affiliate have complied in all material respects with ERISA and, where applicable, the Code regarding each Plan.

(b) Each Plan is, and has been, established and maintained in compliance with its terms, ERISA and, where applicable, the Code, except where the failure to so establish and maintain such Plan could not reasonably be expected to have a Material Adverse Effect.

(c) No act, omission or transaction has occurred which could result in imposition on the Borrower, any Subsidiary or any ERISA Affiliate (whether directly or indirectly) of (i) either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed pursuant to Chapter 43 of Subtitle D of the Code or (ii) breach of fiduciary duty liability damages under section 409 of ERISA.

(d) Full payment when due has been made of all amounts that the Borrower, the Subsidiaries or any ERISA Affiliate is required under the terms of each Plan or applicable law to have paid as contributions to such Plan as of the date hereof.

(e) Neither the Borrower, the Subsidiaries nor any ERISA Affiliate sponsors, maintains, or contributes to an employee welfare benefit plan, as defined in section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former employees of such entities, with respect to which its sponsorship of, maintenance of or

contribution to may not be terminated by the Borrower, a Subsidiary or any ERISA Affiliate in its sole discretion at any time without any material liability.

(f) Neither the Borrower, the Subsidiaries nor any ERISA Affiliate sponsors, maintains or contributes to, or has at any time in the six-year period preceding the date hereof sponsored, maintained or contributed to, any employee pension benefit plan, as defined in section 3(2) of ERISA, including a multiemployer plan as defined in section 3(37) or 4001(a)(3) of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code.

Section 7.11 Disclosure; No Material Misstatements. The Borrower has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of the Borrower or any Subsidiary to the Administrative Agent or any Lender or any of their Affiliates in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished) contains any material misstatement of fact or, when taken as a whole, omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that, with respect to projected financial information, other forward-looking information and information of a general economic or general industry nature, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time such projected financial information was made available and such projections reflect the good faith and reasonable estimates of the Borrower of the future financial performance of Borrower and its Consolidated Subsidiaries and of the other information projected therein for the periods set forth therein, it being understood that such projected financial information is not to be viewed as facts and that the actual results may vary materially from such projected financial information.

Section 7.12 Insurance. Each Loan Party has, and has caused all of its Subsidiaries to have, (a) all insurance policies sufficient for the compliance by each of them with all material Governmental Requirements and all material agreements, including, without limitation, Flood Insurance, if required, with respect to any improved real Property subjected, or required under the Loan Documents to be subjected, to a Lien pursuant to the Security Instruments, and (b) insurance coverage in at least amounts and against such risk (including, without limitation, public liability) that are usually insured against by companies similarly situated and of comparable size and engaged in the same or a similar business for the assets and operations of the Borrower and its Subsidiaries. The Administrative Agent and the Lenders have been named as additional insureds in respect of such liability insurance policies, and the Administrative Agent has been named as loss payee with respect to Property loss insurance. No Loan Party owns any Building (as defined in the applicable Flood Insurance Regulation) constituting Material Real Property or Manufactured (Mobile) Home (as defined in the applicable Flood Insurance Regulation) constituting Material Real Property, in each case situated on any Property subjected, or required under the Loan Documents to be subjected, to a Lien pursuant to the Security Instruments, for which such Loan Party has not delivered to the Administrative Agent evidence reasonably satisfactory to the Required Lenders that (a) such Loan Party maintains

Flood Insurance for such Building or Manufactured (Mobile) Home or (b) such Building or Manufactured (Mobile) Home is not located in a Special Flood Hazard Area.

Section 7.13 [Reserved.]

Section 7.14 Subsidiaries. Except as set forth on Schedule 7.14 or as disclosed in writing to the Administrative Agent as promptly as practicable but in any event within 30 days of such Subsidiary's acquisition or formation (which shall promptly furnish a copy to the Lenders, which shall be a supplement to Schedule 7.14), the Borrower has no Subsidiaries. Each Person on Schedule 7.14 is a Wholly-Owned Subsidiary unless otherwise identified. The Borrower has no Foreign Subsidiaries. All of the outstanding Equity Interests of each Subsidiary has been validly issued, is fully paid, is nonassessable and has not been issued in violation of any preemptive or similar rights. Schedule 7.14 also sets forth the holders (and percentages of ownership) of the Equity Interests in each of the Subsidiaries as of the Closing Date.

Section 7.15 Location of Business and Offices. The Borrower's jurisdiction of organization is Delaware; the name of the Borrower as listed in the public records of its jurisdiction of organization is [Southcross Energy Partners LLC];[7] and the organizational identification number of the Borrower in its jurisdiction of organization is [____] (or, in each case, as set forth in a notice delivered to the Administrative Agent pursuant to Section 8.01(j) in accordance with Section 12.01). The Borrower's principal place of business and chief executive offices are located at the address specified in Section 12.01 (or as set forth in a notice delivered pursuant to Section 8.01(j) and Section 12.01(c)).

Section 7.16 Properties; Titles, Etc.

(a) Each of the Borrower and the Subsidiaries has good and valid title to, valid leasehold interests in, or valid easements, rights of way or other property interests in all of its real and personal Property except for defects that, individually or in the aggregate, (i) do not materially interfere with the ordinary conduct of its business and (ii) could not reasonably be expected to have a Material Adverse Effect. All such Property is free and clear of all Liens except Liens permitted by Section 9.03.

(b) All leases, easements, rights of way and other agreements necessary for the conduct of the business of the Borrower and the Subsidiaries are valid and subsisting, in full force and effect (subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law), and there exists no default or event or circumstance which with the giving of notice or the passage of time or both would give rise to a default under any such lease or leases, which could reasonably be expected to have a Material Adverse Effect.

(c) The rights and Properties presently owned, leased or licensed by the Borrower and the Subsidiaries including, without limitation, all easements and rights of way, include all rights and Properties necessary to permit the Borrower and the Subsidiaries to conduct their business in all material respects in the same manner as its business has been

[7] If the Credit Bid Transaction (as defined in the Plan) is implemented, Newco.

conducted prior to the date hereof (subject to any changes to the business resulting from the MS/AL Sale and the CCPN Sale and other transactions permitted hereunder).

(d) A true, correct and complete list of all (i) (A) trademark or service mark registrations and applications, (B) copyright registrations and applications, and (C) patents and patent applications, in each case, owned by Borrower or a Subsidiary, and (ii) exclusive copyright licenses to U.S. copyrights is, in each case, set forth on Schedule 7.16(d). The Borrower and each Subsidiary owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property ("**Intellectual Property**") necessary for the operation of its business, free and clear of any Liens (except for Liens permitted by Section 9.03), and the use of such Intellectual Property by the Borrower and such Subsidiary does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no part of any Intellectual Property of Borrower or its Subsidiaries has been judged invalid or unenforceable, in whole or in part.

Section 7.17 Maintenance of Properties. Except for such acts or failures to act as could not be reasonably expected to have a Material Adverse Effect, the offices, plants, gas processing plants, platforms, pipelines, improvements, fixtures, equipment, and other Property owned, leased or used by the Borrower and its Subsidiaries in the conduct of their businesses (taking into account any transitional service arrangements entered into in connection with, and other changes to the business resulting from, the MS/AL Sale and the CCPN Sale) are (a) being maintained in a state adequate to conduct normal operations, (b) structurally sound with no known defects, (c) in good operating condition and repair, subject to ordinary wear and tear, (d) not in need of maintenance or repair except for ordinary, routine maintenance and repair, (e) sufficient for the operation of the businesses of the Borrower and its Subsidiaries as currently conducted, and (f) in conformity with all Governmental Requirements relating thereto.

Section 7.18 Hedging Agreements and Qualified ECP Guarantor. Schedule 7.18, as of the date hereof, sets forth, a true and complete list of all Hedging Agreements of the Borrower and each Subsidiary, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), all credit support agreements relating thereto (including any margin required or supplied) and the counterparty to each such agreement. The Borrower is a Qualified ECP Guarantor.

Section 7.19 Security Instruments.

(a) Guaranty and Collateral Agreement. The provisions of the Guaranty and Collateral Agreement are effective to create, in favor of the Administrative Agent for the benefit of the Secured Parties, a legal, valid and enforceable Lien on, and security interest in, all of the Collateral described therein, and (i) when financing statements and other filings in appropriate form are filed in the offices specified in the Guaranty and Collateral Agreement and (ii) upon the taking of possession or control by the Administrative Agent of the Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Administrative Agent to the extent possession or control by the Administrative Agent is required by the Guaranty and Collateral Agreement), the Liens created

by the Guaranty and Collateral Agreement shall constitute fully perfected first priority Liens on, and security interests in, all right, title and interest of the Loan Parties in the Collateral covered thereby (other than such Collateral in which a Lien or a security interest cannot be perfected by filing, possession or control under the Uniform Commercial Code as in effect at the relevant time in the relevant jurisdiction), in each case free of all Liens other than Liens permitted under Section 9.03, and prior and superior to all other Liens other than Excepted Liens.

(b) Mortgages. Each Mortgage is effective to create, in favor of the Administrative Agent (or such other trustee as may be required or desired under local law) for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, all of the Mortgaged Property thereunder, subject only to Liens permitted under Section 9.03, and when the Mortgages are filed in the offices specified on Schedule 7.19 (or, in the case of any Mortgage executed and delivered after the date thereof in accordance with the provisions of Section 8.12, Section 8.14, and Section 8.20 when such Mortgage is filed in the appropriate offices), the Mortgages shall constitute fully perfected first priority Liens on, and security interests in, all right, title and interest of the Loan Parties in that portion of the Mortgaged Property constituting real property and fixtures affixed or attached to such real property, in each case prior and superior in right to any other person, other than Excepted Liens.

(c) Valid Liens. Each Security Instrument delivered pursuant to Section 8.12, Section 8.14, and Section 8.20 upon execution and delivery thereof, is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, all of the Collateral thereunder, and (i) when financing statements and other filings in appropriate form are filed or recorded in the appropriate offices as are required by the Guaranty and Collateral Agreement, and (ii) upon the taking of possession or control by the Administrative Agent of the Collateral with respect to which a security interest may be perfected only by possession or control, the Liens created by such Security Instrument will constitute fully perfected first priority Liens on, and security interests in, all right, title and interest of the Loan Parties in such Collateral (other than such Collateral in which a Lien or security interest cannot be perfected by filing, possession or control under the Uniform Commercial Code as in effect at the relevant time in the relevant jurisdiction), in each case with no other Liens except for Liens permitted under Section 9.03.

Section 7.20 Use of Loans. The proceeds of the Loans and the Letters of Credit shall be used for the purposes specified in **Error! Reference source not found.**. The Borrower and its Subsidiaries are not engaged principally, or as one of its or their important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying margin stock (within the meaning of Regulation T, U or X of the Board). No part of the proceeds of any Loan will be used for any purpose which violates the provisions of Regulations T, U or X or any other regulation of the Board.

Section 7.21 Solvency. Each Loan Party is Solvent.

Section 7.22 Common Enterprise. Each of the Borrower and its Subsidiaries and their business operations are closely integrated with one another into a single, interdependent and collective, common enterprise so that any benefit received by any one of them from the financial accommodations provided under this Agreement will be to the direct benefit of the others. The

Borrower and its Subsidiaries intend to render services to or for the benefit of each other, to purchase or sell and supply goods to or from or for the benefit of each other, to make loans, advances and provide other financial accommodations to or for the benefit of each other and to provide administrative, marketing, payroll and management services to or for the benefit of each other (in each case, except as may be prohibited by this Agreement).

Section 7.23 Material Contracts. Schedule 7.23 hereto contains a complete list, as of the Closing Date, of all Material Contracts of the Borrower and each Subsidiary, including all amendments thereto. All Material Contracts are in full force and effect, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law, and neither the Borrower nor any Subsidiary is in default under any Material Contract, except for such defaults as could not be reasonably expected to have a Material Adverse Effect. None of the Material Contracts prohibits the transactions contemplated under the Loan Documents. Each of the Material Contracts is currently in the name of, or has been assigned to, a Loan Party (with the consent or acceptance of each other party thereto if and to the extent that such consent or acceptance is required thereunder). The Borrower and its Subsidiaries have delivered to the Administrative Agent a complete and current copy of each of their Material Contracts existing on the Closing Date.

Section 7.24 [Reserved.]

Section 7.25 Employee Matters. As of the Closing Date, (a) neither the Borrower nor any Subsidiary, nor any of their respective employees, is subject to any collective bargaining agreement, (b) no petition for certification or union election is pending or, to the knowledge of the Borrower or any Subsidiary, contemplated with respect to the employees thereof and no union or collective bargaining unit has sought such certification or recognition with respect to the employees of the Borrower or any Subsidiary, and (c) there are no strikes, slowdowns, work stoppages or controversies pending or, to the knowledge of the Borrower or any Subsidiary after due inquiry, threatened between the Borrower or any Subsidiary and its respective employees.

Section 7.26 Anti-Terrorism Laws.

(a) The Borrower is not, and to the knowledge of the Borrower, none of the Borrower's Affiliates, officers or directors is in violation of any Governmental Requirement relating to terrorism or money laundering ("**Anti-Terrorism Laws**"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "**Executive Order**"), the USA Patriot Act, and the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., in each case, as amended from time to time.

(b) The Borrower is not, and to the knowledge of the Borrower, no Affiliate, officer, director, broker or other agent of the Borrower acting or benefiting in any capacity in connection with the Loans is any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) a Person that is named as a "specially designated national and blocked Person" on the most current list published by OFAC at its official website or any replacement website or other replacement official publication of such list.

(c) No Loan Party and, to the knowledge of the Borrower, no broker or other agent of any Loan Party acting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in paragraph (b) above, (ii) deals in, or otherwise engages in any transaction relating to, any Property or interests in Property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(d) (i) Neither the Borrower nor any of its subsidiaries, nor, to the knowledge of any Loan Party, any director, officer, agent, employee or Affiliate of the Borrower or any of its subsidiaries is currently, or is owned or controlled by Persons that are currently (A) the subject of any United States sanctions administered or enforced by OFAC or the United States Department of State (collectively, "**Sanctions**"), or (B) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions, and (ii) the Borrower will not directly or indirectly use the proceeds from the Loans or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, for the purpose of financing the activities of any Person currently the subject of Sanctions or in violation of Sanctions.

Section 7.27 Foreign Corrupt Practices. No Loan Party and, to the knowledge of the Borrower, no director, officer, agent, employee or Affiliate of the Borrower or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a material violation by such Persons of the FCPA, including without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "**foreign official**" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and, the Loan Parties and, to the knowledge of the Borrower, their Affiliates have conducted their business in material compliance with the FCPA.

ARTICLE VIII
AFFIRMATIVE COVENANTS

Until Payment in Full, the Borrower (on behalf of itself and its Subsidiaries) and each Guarantor by its execution of the Guaranty and Collateral Agreement, covenants and agrees with the Administrative Agent and the Lenders that:

Section 8.01 Financial Statements; Other Information. The Borrower will furnish to the Administrative Agent and each Lender:

(a) Annual Financial Statements. As soon as available, but in any event not later than (x) 160 days after the last day of the fiscal year ended 2019 and (y) 90 days after the last day of each fiscal year thereafter, its audited consolidated balance sheet and related statements of income or operations (and, as to balance sheets and statements of income or operations, accompanied by consolidating schedules), stockholders' equity and cash flows as of the end of and for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Deloitte & Touche LLP or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception (other than solely with respect to, or resulting solely from, an upcoming maturity date of any Loans under this Agreement occurring within one year from the time such opinion is delivered or any potential inability to satisfy a financial maintenance covenant under this Agreement on a future date or in a future period) and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied.

(b) Quarterly Financial Statements. As soon as available, but in any event not later than (x) 60 days after the last day of each of the first three fiscal quarters for the fiscal year ended 2020 and (y) 45 days after the last day of each of the first three fiscal quarters of each fiscal year thereafter, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then-elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period(s) of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end adjustments and the absence of footnotes.

(c) Financial Projections. Concurrently with any delivery of financial statements under Section 8.01(a) and in any event no later than April 1st of each calendar year, projections for the Borrower and its Consolidated Subsidiaries for each fiscal year of the Borrower through the end of the fiscal year in which the latest Maturity Date occurs (each, as updated from time to time in accordance with this Section 8.01(c), an "**Annual Budget**"), and which such Annual Budget (i) shall be approved by a majority of the Borrower's Board of Directors and (ii) shall include (1) volumes and pricing assumptions and (2) itemized budget forecasts set forth, for the first fiscal year reflected in such Annual Budget, (x) on a monthly basis for capital expenditures (including line items for "Maintenance Cap Ex" and "Growth Cap Ex" determined in a manner consistent with the projections attached as Exhibit C to the Disclosure Statement Supplement Exhibits and "Other Cap Ex" for capital expenditures (if any) other than "Maintenance Cap Ex" and "Growth Cap" Ex") and (y) on a quarterly basis for all

other line items, in each case, in form and substance reasonably satisfactory to the Required Lenders. From time to time thereafter, the Borrower may furnish, and following the occurrence and during the continuance of any Event of Default, upon the request of the Required Lenders, will furnish on a reasonably prompt basis, to the Administrative Agent and each Lender one or more updates to the Annual Budget, which updates shall be prepared in a manner consistent with the terms of this Section 8.01(c) and approved by a majority of the Borrower's Board of Directors, and shall be deemed incorporated in the Annual Budget.

(d) Certificate of Financial Officer – Compliance. Concurrently with any delivery of financial statements required pursuant to Section 8.01(a) or Section 8.01(b), a certificate of a Financial Officer in substantially the form of Exhibit D-2 hereto (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 9.01, (iii) stating whether any change in GAAP or in the application thereof has occurred since December 31, 2018 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate and (iv) specifying each Subsidiary.

(e) Certificate of Financial Officer – Hedging Agreements. Concurrently with any delivery of financial statements under Section 8.01(a) or Section 8.01(b), a certificate of a Financial Officer, in substantially the form of Schedule 7.18, setting forth as of the last Business Day of such fiscal quarter or fiscal year, a true and complete list of all Hedging Agreements of the Borrower and each Subsidiary, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), the net mark-to-market value therefor, any new credit support agreements relating thereto, any margin required or supplied under any credit support document, and the counterparty to each such agreement.

(f) Certificate of Insurer – Insurance Coverage. Concurrently with any delivery of financial statements under Section 8.01(a), a certificate of insurance coverage from each insurer with respect to the insurance required by Section 8.07, in substantially the form provided to the Administrative Agent pursuant to Section 6.01(j) on the Closing Date, and, if requested by the Administrative Agent or any Lender, all copies of the applicable policies.

(g) Other Accounting Reports. Promptly upon receipt thereof, a copy of each other report or letter submitted to the Borrower or any of its Subsidiaries by independent accountants in connection with any annual, interim or special audit made by them of the books of the Borrower or any such Subsidiary, and a copy of any response by the Borrower or any such Subsidiary, or the Board of Directors of the Borrower or any such Subsidiary, to such letter or report.

(h) Certificate of Financial Officer - Excess Cash Balance. On the fifth (5^{th}) Business Day following the last day of each calendar month, a certificate of a Financial Officer in substantially the form of Exhibit D-3 hereto setting forth reasonably detailed calculations of the Excess Cash Balance, including without limitation, reasonably detailed calculations of each component thereof.

(i) Notices Under Material Instruments. Promptly after the furnishing thereof, copies of any financial statement, report or notice furnished to or by any Person pursuant to the terms of any Material Indebtedness, other than the Loan Documents, and not otherwise required to be furnished to the Lenders pursuant to any other provision of this Section 8.01.

(j) Information Regarding Loan Parties. Promptly (and in any event within ten (10) Business Days (or such later time as the Administrative Agent (acting at the direction of the Required Lenders) may agree)), written notice of any change (i) any Loan Party's corporate name or in any trade name used to identify such Person in the conduct of its business or in the ownership of its Properties, (ii) in the location of any Loan Party's chief executive office or principal place of business, (iii) in any Loan Party's identity or corporate structure or in the jurisdiction in which such Person is incorporated or formed, (iv) in any Loan Party's jurisdiction of organization or such Person's organizational identification number in such jurisdiction of organization, and (v) in any Loan Party's federal taxpayer identification number.

(k) Notices of Certain Changes. Except in connection with Organization Documents of the Borrower and its Subsidiaries that are delivered pursuant to Section 6.01(c) after giving effect to the Chapter 11 Emergence Transactions, promptly, but in any event within five (5) Business Days after the execution thereof, copies of any material amendment, modification or supplement to the certificate or articles of incorporation certificate or articles of formation or organization, any preferred stock designation or any other public organic document of the Borrower or any Subsidiary.

(l) Lender Calls. The Borrower shall participate, and cause key management personnel of the Borrower to participate, in a conference call with the Administrative Agent and the Lenders to provide discussion and analysis with respect to the financial condition and results of operations of the Borrower and its Subsidiaries at a time to which the Borrower and the Administrative Agent shall mutually agree, (i) not less frequently than once per fiscal quarter, promptly following each delivery of financial statements pursuant to Sections 8.01(a) and 8.01(b), and (ii) following the occurrence and during the continuance of any Default, from time to time upon the reasonable request of the Administrative Agent (upon instruction from the Required Lenders).

(m) Other Requested Information. Promptly following any request therefor, such other information regarding the operations, business affairs, liquidity, business plan and financial condition of the Borrower or any Subsidiary (including, without limitation, any Plan and any reports or other information required to be filed with respect thereto under the Code or under ERISA), or compliance with the terms of this Agreement or any other Loan Document, as the Administrative Agent or any Lender may reasonably request.

(n) Real Property Report. Concurrently with the delivery of the financial statements under Section 8.01(b), but in any event not later than (x) 60 days after the last day of each of the first three fiscal quarters for the fiscal year ended 2020 and (y) 45 days after the last day of each of the first three fiscal quarters of each fiscal year thereafter, (or such longer period as may be reasonably acceptable to the Administrative Agent acting at the direction of the Required Lenders), a certificate of a Financial Officer setting forth as of the last Business Day of such fiscal quarter, title information in form and substance acceptable to the Administrative

Agent (acting at the direction of the Required Lenders) with respect to any real Property acquired by the Borrower and its Subsidiaries during such fiscal quarter for consideration in excess of $1,000,000, individually or in the aggregate.

(o) Notice of Casualty Events. Prompt written notice, and in any event within three (3) Business Days, of the occurrence of any Casualty Event resulting in a prepayment under Section 3.04(b)(iii).

Information required to be delivered pursuant to this Section 8.01(a), (b), (h) or (m) shall be deemed to have been delivered if such information is available on the website of the SEC and the Borrower has delivered notice to the Administrative Agent that such reports are so available, which notice may be provided in any certificate delivered pursuant to Section 8.01(d).

The Borrower hereby acknowledges that (a) the Administrative Agent may, but shall not be obligated to, make available to the Lenders and the Issuing Banks materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on Debt Domain, IntraLinks, SyndTrak or another similar electronic system (the "**Platform**") and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to the Loan Parties, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Issuing Banks and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 12.11); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the following Borrower Materials shall be deemed "PUBLIC," unless the Borrower notifies the Administrative Agent promptly that any such document contains material non-public information: (1) the Loan Documents or (2) Information required to be delivered pursuant to this Section 8.01(a), (b), (d) or (n).

Section 8.02 Notices of Material Events. The Borrower will furnish to the Administrative Agent and each Lender prompt written notice of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of, or the threat in writing of, any action, suit, proceeding, investigation or arbitration by or before any arbitrator or Governmental Authority against or affecting any Loan Party not previously disclosed in writing to the Lenders or any material adverse development in any action, suit, proceeding, investigation or arbitration (whether or not previously disclosed to the Lenders) that, in either case, if adversely determined, could reasonably be expected to result in liability in excess of $3,500,000, not fully covered by insurance, subject to normal deductibles;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding $3,500,000;

(d) any threatened action, investigation or inquiry in writing by any Governmental Authority or any threatened demand or lawsuit in writing by any Person against the Borrower or its Subsidiaries or their Properties of which the Borrower has knowledge in connection with any Environmental Laws if the Borrower could reasonably anticipate that such action will result in liability (whether individually or in the aggregate) in excess of $3,500,000, not fully covered by insurance, subject to normal deductibles;

(e) a copy of any written form of notice, summons, citation, proceeding or order received by any Loan Party from the Federal Energy Regulatory Commission regarding any action, investigation or inquiry that could reasonably be expected to result in a Material Adverse Effect or liability (whether individually or in the aggregate) in excess of $3,500,000; and

(f) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section 8.02 shall be accompanied by a statement of a Responsible Officer setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 8.03 Existence; Conduct of Business. The Borrower will, and will cause each Subsidiary to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, consents, privileges and franchises material to the conduct of its business and maintain, if necessary, its qualification to do business in each other jurisdiction in which its Properties are located or the ownership of its Properties requires such qualification, except where the failure to so qualify could not reasonably be expected to have a Material Adverse Effect; *provided* that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 9.10.

Section 8.04 Payment of Tax Obligations. The Borrower will, and will cause each Subsidiary to, pay its material Tax liabilities before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment

pending such contest could not reasonably be expected to result in a Material Adverse Effect or result in the seizure or levy of any material Property of any Loan Party.

Section 8.05 [Reserved].

Section 8.06 Operation and Maintenance of Properties. The Borrower, at its own expense, will, and will cause each Subsidiary to:

(a) operate its Properties or cause such Properties to be operated in a careful and efficient manner in accordance with the practices of the industry and in compliance with all applicable contracts and agreements and in compliance with all Governmental Requirements, including, without limitation, applicable Environmental Laws, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(b) preserve, maintain and keep in good repair, condition, working order and efficiency (ordinary wear and tear excepted) all of its Properties, including, without limitation, all equipment, machinery and facilities, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(c) preserve, maintain, renew and keep in full force and effect all of its patents, trademarks, trade names, trade dress, service marks, domain names, copyrights and trade secrets, except, in each case, where the failure to so preserve, maintain, renew or keep in full force and effect could not reasonably be expected to have a Material Adverse Effect;

(d) promptly perform or make reasonable and customary efforts to cause to be performed, in accordance with industry standards, the obligations required by each and all of the assignments, deeds, leases, sub-leases, contracts and agreements affecting its interests in its Properties, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect; and

(e) to the extent the Borrower is not the operator of any Property, the Borrower shall use commercially reasonable efforts to cause the operator of such Property to comply with this Section 8.06 in accordance with standard industry practices; and

(f) maintain all material agreements, licenses, permits, and other rights required for any of the foregoing described in this Section 8.06 in full force and effect in accordance with their terms, timely make any payments due thereunder, and prevent any default thereunder which could result in a termination or loss thereof, except any such failure to pay or default that could not reasonably, individually or in the aggregate, be expected to cause a Material Adverse Effect.

Section 8.07 Insurance. The Borrower will, and will cause each Subsidiary to, maintain, with financially sound and reputable insurance companies, insurance (i) in such amounts and against such risks as are customarily maintained by companies of similar size engaged in the same or similar businesses operating in the same or similar locations (including hazard insurance), and (ii) in accordance with all Governmental Requirements, including, without limitation, Flood Insurance, if required. The loss payable clauses or provisions in said insurance policy or policies insuring any of the Collateral for the Loans shall be endorsed in

favor of and made payable to the Administrative Agent as its interests may appear and such policies shall name the Administrative Agent as an "additional insured" and "loss payee" and provide that the insurer will give at least thirty (30) days' prior notice of any cancellation to the Administrative Agent.

Section 8.08 Books and Records; Inspection Rights. The Borrower will, and will cause each Subsidiary to, maintain financial records in accordance with GAAP in all material respects. The Borrower will, and will cause each Subsidiary to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice and during normal business hours, to visit and inspect its Properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its Responsible Officers and independent accountants, all at such reasonable times and as often as reasonably requested (*provided* that the Administrative Agent shall give the Borrower reasonable advance notice of any proposed discussion with such accountants and permit the Borrower and its representatives to be present during such discussions, and *provided, further*, that, so long as no Event of Default has occurred and continues to exist, no more than one such visitation with the Borrower's independent public accountants shall be conducted during any calendar year), and *provided further* that, excluding any visits and inspections during the continuation of an Event of Default, only the Administrative Agent (or its representative) on behalf of the Lenders may exercise rights under this Section 8.08 and the Administrative Agent shall not exercise such rights more often than two times during any calendar year absent the existence of a continuing Event of Default and only one such visit per fiscal year shall be at the Borrower's expense).

Section 8.09 Compliance with Laws. The Borrower will, and will cause each Subsidiary to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its Property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 8.10 Compliance with Material Agreements. The Borrower will, and will cause each Subsidiary to, comply with all agreements, contracts and instruments binding on it or affecting its Properties or business, except to the extent that such noncompliance could not reasonably be expected to have a Material Adverse Effect.

Section 8.11 Environmental Matters.

(a) The Borrower shall at its sole expense: (i) comply, and shall cause its Properties and operations and each Subsidiary and each Subsidiary's Properties and operations to comply, with all applicable Environmental Laws, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect; (ii) not Release or threaten to Release, and shall cause each Subsidiary not to Release or threaten to Release, any Hazardous Material on, under, about or from any of the Borrower's or its Subsidiaries' Properties or any other property offsite the Property to the extent caused by the Borrower's or any of its Subsidiaries' operations except in compliance with applicable Environmental Laws, if the Release or threatened Release could reasonably be expected to have a Material Adverse Effect; (iii) timely obtain, file or prepare, and shall cause each Subsidiary to timely obtain, file or prepare, all Environmental Permits, if any, required under applicable Environmental Laws to be obtained or filed in connection with the operation or use of the

Borrower's or its Subsidiaries' Properties, except where such failure to obtain or file could not reasonably be expected to have a Material Adverse Effect; (iv) promptly commence and diligently prosecute to completion, and shall cause each Subsidiary to promptly commence and diligently prosecute to completion, any assessment, evaluation, investigation, monitoring, containment, cleanup, removal, repair, restoration, remediation or other remedial obligations (collectively, the "**Remedial Work**") in the event any Remedial Work is required or reasonably necessary under applicable Environmental Laws because of or in connection with the actual or suspected past, present or future Release or threatened Release of any Hazardous Material on, under, about or from any of the Borrower's or its Subsidiaries' Properties, if failure to commence and diligently prosecute to completion such Remedial Work could reasonably be expected to have a Material Adverse Effect; (v) conduct, and cause its Subsidiaries to conduct, their respective operations and businesses in a manner that will not expose any Property or Person to Hazardous Materials that could reasonably be expected to form the basis for a claim for material damages or compensation, except with respect to such claims that could not reasonably be expected to have a Material Adverse Effect; and (vi) establish and implement, and shall cause each Subsidiary to establish and implement, such procedures as may be necessary to continuously determine and assure that the Borrower's and its Subsidiaries' obligations under this Section 8.11(a) are timely and fully satisfied, which failure to establish and implement such procedures could reasonably be expected to have a Material Adverse Effect.

(b) The Borrower will, and will cause each Subsidiary to, provide existing Phase I site assessments, to the extent they are available, upon request by the Administrative Agent and the Lenders, in connection with any future acquisitions of Properties; *provided* that for the avoidance of doubt, there shall be no obligation under this Section for the Borrower to obtain such assessments.

Section 8.12 Further Assurances. The Borrower at its sole expense will, and will cause each Subsidiary to, promptly execute and deliver to the Administrative Agent all such other documents, agreements and instruments reasonably requested by the Administrative Agent to comply with, cure any defects or accomplish the conditions precedent, covenants and agreements of the Borrower or any Subsidiary, as the case may be, in the Loan Documents, including the Notes, or to further evidence and more fully describe the Collateral intended as security for the Secured Obligations, or to correct any omissions in this Agreement or the Security Instruments, or to state more fully the obligations secured therein, or to perfect, protect or preserve any Liens created pursuant to this Agreement or any of the Security Instruments or the priority thereof, or to make any recordings, file any notices or obtain any consents, all as may be reasonably necessary or appropriate, in the sole discretion of the Administrative Agent, in connection therewith.

Section 8.13 Title Information. If the Borrower or any Subsidiary acquires any new pipeline and processing Properties for consideration in excess of $3,000,000, individually or in the aggregate, the Borrower shall, or shall cause such Subsidiary to, provide promptly (and in any event within 30 days (or such longer period as may be reasonably acceptable to the Administrative Agent (acting at the direction of the Required Lenders)), title information regarding such new pipeline and processing Properties to the Administrative Agent. The Borrower shall, within sixty (60) days of notice from the Administrative Agent (or such later date as the Administrative Agent (acting at the direction of the Required Lenders) may agree in

its sole discretion that title defects or exceptions exist with respect to such additional Properties, either (i) cure any such title defects or exceptions (including defects or exceptions as to priority) which are not permitted by Section 9.03 raised by such information to the reasonable satisfaction of the Required Lenders, or (ii) deliver title information in form and substance acceptable to the Required Lenders so that the Administrative Agent shall have received, together with title information previously delivered to the Administrative Agent, title information reasonably satisfactory to the Required Lenders relative to the pipeline and processing Properties of the Borrower and its Subsidiaries.

Section 8.14 Additional Collateral; Additional Guarantors.

(a) In the event that the Borrower or any Subsidiary acquires or forms a Subsidiary, or if the Borrower or any other Subsidiary causes any Subsidiary to guarantee any Material Indebtedness (other than Indebtedness incurred under Section 9.02(b), (c), (d), (f) or (g)), the Borrower or its Subsidiary shall promptly, but in any event within 30 days (or such later date as the Administrative Agent (acting at the direction of the Required Lenders) may agree in its sole discretion, cause such Subsidiary to guarantee the Secured Obligations pursuant to the Guaranty and Collateral Agreement. In connection with any guaranty, the Borrower shall, or shall cause such Subsidiary to, (i) execute and deliver to the Administrative Agent a supplement to the Guaranty and Collateral Agreement and such other Security Instruments (in proper form for filing, registration or recordation, as applicable) as are requested by the Administrative Agent, and take such actions necessary or advisable to grant to the Administrative Agent for the benefit of the Secured Parties a first priority perfected Lien (subject only to Excepted Liens) on all Collateral of such Subsidiary, (ii) cause the owner of the Equity Interests in such Subsidiary to pledge such Equity Interests (including, without limitation, delivery of original stock certificates evidencing the Equity Interests of such Subsidiary, together with an appropriate undated stock powers for each certificate duly executed in blank by the registered owner thereof) in accordance with the Security Instruments and (iii) execute and deliver such other additional closing documents, certificates and legal opinions as shall reasonably be requested by the Administrative Agent.

(b) The Borrower will at all times cause (i) all Material Real Property, and (ii) all tangible and intangible personal Property of the Borrower and each Subsidiary not covered by clause (a) above, in each case, to be subject to a Lien pursuant to the Security Instruments, except that, with respect to any Material Real Property acquired by the Borrower or a Subsidiary after the date hereof, the Borrower or such Subsidiary, as the case may be, shall have a period of sixty (60) days (or such later date as the Administrative Agent (acting at the direction of the Required Lenders) may agree in its sole discretion after such acquisition within which to subject such Material Real Property to a Lien pursuant to the Security Instruments, and, in connection therewith, the Borrower shall, or shall cause such Subsidiary to, execute and deliver such Security Instruments (in proper form for filing, registration or recordation, as applicable) as are requested by the Administrative Agent, and take such actions necessary or advisable to subject such Material Real Property to a Lien pursuant to the Security Instruments, *provided, however*, that with respect to any real Property, if the Administrative Agent (acting at the direction of the Required Lenders) reasonably determines that the costs, financial and otherwise, of obtaining or maintaining a Lien, perfecting a Lien and/or complying with all Governmental Requirements with respect to such a Lien outweigh the benefit to the Secured Parties of the security afforded

thereby, the Administrative Agent may notify the Borrower of such determination and, (x) if such real Property is not then subject to a Lien pursuant to the Security Instruments, such real Property shall not be required to become subject to a Lien pursuant to the Security Instruments and, (y) if such real Property is already subject to a Lien pursuant to the Security Instruments, the Administrative Agent may, upon obtaining the consent of the Required Lenders, release such Lien. No Building or Manufactured (Mobile Home) (each as defined in the applicable Flood Insurance Regulations) shall become Mortgaged Property unless and until the Administrative Agent shall have received, to the extent required by the Lenders or the Administrative Agent, the Flood Zone Documentation.

(c) Upon the request of the Required Lenders, the Borrower and each of its Subsidiaries shall take any additional actions required, if any, to cause all of its right, title and interest in each Hedging Agreement to which it is a party to be collaterally assigned to the Administrative Agent, for the benefit of the Secured Parties, and shall, if requested by the Administrative Agent or the Required Lenders, use its commercially reasonable efforts to cause each such agreement or contract to (i) expressly permit such assignment and (ii) upon the occurrence of any default or event of default under such agreement or contract, (A) to permit the Lenders to cure such default or event of default and assume the obligations of such Loan Party under such agreement or contract and (B) to prohibit the termination of such agreement or contract by the counterparty thereto if the Lenders assume the obligations of such Loan Party under such agreement or contract and the Lenders take the actions required under the foregoing clause (A).

Section 8.15 Ratings. The Borrower will use commercially reasonable efforts to obtain and maintain at all times on and after the Closing Date, a public rating for the Exit Credit Facilities from Moody's and S&P, it being understood that no specific rating need be obtained. As used in this Section 8.15, "commercially reasonable efforts" shall in any event include the payment by the Borrower of customary rating agency fees, cooperation with information and data requests by Moody's and S&P in connection with their ratings process and the participation by senior management of the Borrower in a ratings presentation to Moody's and S&P.

Section 8.16 Use of Proceeds

(a) The proceeds of the Initial Term Loans and any Incremental Term Loans shall be used solely in accordance with Section 2.07, including to cash collateralize Letters of Credit, to reimburse LC Disbursements and as Alternate Cash Collateral.

(b) The proceeds of Revolving Loans and the Letters of Credit will be used for working capital, capital expenditures, general corporate purposes and any other purpose of the Borrower and its Subsidiaries not otherwise prohibited under this Agreement.

Section 8.17 ERISA Compliance. The Borrower will promptly furnish and will cause the Subsidiaries and any ERISA Affiliate to promptly furnish to the Administrative Agent (a) promptly after the filing thereof by the Borrower or any Subsidiary with the United States Secretary of Labor or the IRS (or if filed by a third party, promptly after the Borrower or a Subsidiary becomes aware of such filing), copies of each annual and other report with respect to each Plan or any trust created thereunder, and (b) promptly upon becoming aware of the

occurrence of any "prohibited transaction," as described in section 406 of ERISA or in section 4975 of the Code, in connection with any Plan or any trust created thereunder, that would reasonably be expected to have a Material Adverse Effect, a written notice signed by the Responsible Officer of the Borrower specifying the nature thereof, what action the Borrower, the Subsidiary or the ERISA Affiliate is taking or proposes to take with respect thereto, and, when known, any action taken or proposed by the IRS or the Department of Labor with respect thereto.

Section 8.18 [Reserved.]

Section 8.19 Commodity Exchange Act Keepwell Provisions. The Borrower hereby guarantees the payment and performance of all Secured Obligations of each Loan Party (other than the Borrower) and absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each Loan Party (other than the Borrower) in order for such Loan Party to honor its obligations under the Guaranty and Collateral Agreement including obligations with respect to Hedging Agreements (*provided, however*, that the Borrower shall only be liable under this Section for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section, or otherwise under this Agreement or any Loan Document, as it relates to such other Loan Parties, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of the Borrower under this Section shall remain in full force and effect until all Indebtedness is paid in full to the Lenders, the Administrative Agent and all other Secured Parties, and all of the Lenders' Commitments are terminated. The Borrower intends that this Section constitute, and this Section shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

Section 8.20 Post-Closing Obligations. The Borrower shall deliver, or cause to be delivered, as the case may be, each of the items set forth on Schedule 8.20, in each case on or prior to the date specified in such Schedule for such item or such later date as the Administrative Agent (acting at the direction of the Required Lenders) may determine and agree to in writing in its sole discretion.

ARTICLE IX
NEGATIVE COVENANTS

Until Payment in Full, the Borrower (on behalf of itself and its Subsidiaries) and each Guarantor by its execution of the Guaranty and Collateral Agreement) covenants and agrees with the Administrative Agent and the Lenders that:

Section 9.01 Financial Covenant. Commencing with the fiscal quarter ending [___], 2020[8], Liquidity shall not be less than $10,000,000 as of the last day of each fiscal quarter.

Section 9.02 Indebtedness. The Borrower will not, and will not permit any Subsidiary to, incur, create, assume or suffer to exist any Indebtedness, except:

[8] The first fiscal quarter ending not less than 6 months after the Closing Date.

(a) the Secured Obligations arising under the Loan Documents or the Secured Hedging Agreements or with respect to any Bank Products, or any guaranty of or suretyship arrangement for the Secured Obligations arising under the Loan Documents, the Secured Hedging Agreements or with respect to any Bank Products;

(b) Indebtedness under Capital Leases or that constitutes Purchase Money Indebtedness; *provided* that the aggregate principal amount of all Indebtedness described in this Section 9.02(b) at any one time outstanding shall not to exceed $10,000,000 in the aggregate;

(c) Indebtedness associated with performance bonds, bid bonds, surety bonds, appeal bonds or customs bonds required in the ordinary course of business or in connection with the enforcement of rights or claims of the Borrower or any Subsidiary or in connection with judgments that do not result in a Default;

(d) intercompany Indebtedness between the Borrower and any Subsidiary or between Subsidiaries to the extent permitted by Section 9.05(g); *provided* that such Indebtedness is not held, assigned, transferred, negotiated or pledged to any Person other than the Borrower or one of its Wholly-Owned Subsidiaries, and, *provided, further*, that any such Indebtedness owed by a Loan Party shall be subordinated to the Secured Obligations on terms set forth in the Guaranty and Collateral Agreement;

(e) Indebtedness constituting a guaranty by any Loan Party of Indebtedness permitted to be incurred by any other Loan Party under this Section 9.02;

(f) endorsements of negotiable instruments for deposit or collection in the ordinary course of business;

(g) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business, so long as such Indebtedness shall not exceed the amount of the unpaid cost of, and shall be incurred only to defer the cost of, the underlying policy;

(h) Indebtedness incurred by the Loan Parties in connection with a Permitted Acquisition consisting of indemnities in the ordinary course of business or obligations in respect of purchase price adjustments or earn-outs, *provided*, in the case of earn-outs, that, immediately after the incurrence of such Indebtedness, the Total Net Leverage Ratio calculated on a Pro Forma Basis as of the last day of the most recently ended Measurement Period is less than or equal to 2.00 to 1.00;

(i) Indebtedness (i) arising from the honoring by a bank or other financial institution of a check, draft, payment order or other debit drawn, presented or issued against insufficient funds in the ordinary course of business, *provided* that such Indebtedness is extinguished within five Business Days of its incurrence or (ii) arising under any Bank Products provided by a bank or other financial institution to the Loan Parties in the ordinary course of business;

(j) Other Indebtedness incurred by the Loan Parties not to exceed $7,500,000 in the aggregate at any one time outstanding.

Section 9.03 Liens. The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any of its Properties (now owned or hereafter acquired), except:

(a) Liens securing the payment of any Secured Obligations pursuant to the Security Instruments;

(b) Excepted Liens;

(c) Liens securing Capital Leases and Purchase Money Indebtedness permitted by Section 9.02(b) but only on the Property under lease or the Property purchased with such Purchase Money Indebtedness, as applicable;

(d) Liens on proceeds of letters of credit permitted to be posted in connection with Hedging Agreements permitted by Section 9.17;

(e) (i) pledges and deposits of cash in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to such Person and (ii) Liens on proceeds of insurance policies securing Indebtedness permitted under Section 9.02(g);

(f) Liens on cash earnest money or escrowed deposits in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 9.05, to be applied against the purchase price for and indemnities with respect to such Investment, solely to the extent such Investment would have been permitted on the date of the creation of such Lien;

(g) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or assets of any Person that becomes a Subsidiary after the Closing Date prior to the time such Person becomes a Subsidiary, as the case may be; *provided* that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, (ii) such Lien does not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien secures only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be;

(h) Liens on Alternate Cash Collateral securing obligations owed to customers, suppliers and/or vendors in an aggregate amount not to exceed the Alternate Cash Collateral Limit; *provided* that such Alternate Cash Collateral will continue to secure the Secured Obligations (other than reimbursement obligations under Letters of Credit) on a junior lien basis under arrangements (including security documentation and cash management) that are reasonably acceptable to the Administrative Agent and the Required Lenders (it being understood and agreed that in any event the Loan Parties' interests in such Alternate Cash Collateral, including the residual value of such Alternate Cash Collateral or the remaining interests of the Loan Parties therein will continue to constitute Collateral that secures the Secured Obligations);

(i) Liens securing Indebtedness under Hedging Agreements permitted by Section 9.17;

(j) Liens arising by virtue of asset purchase agreements entered into in connection with any disposition permitted hereunder and limited to customary encumbrances applicable solely to the assets sold (or to be sold) in connection therewith and securing the collateral rights of the purchaser; and

(k) other Liens securing Indebtedness and other obligations outstanding in an aggregate principal amount not to exceed $7,500,000.

Section 9.04 Restricted Payments. The Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, return any capital to its stockholders or make any distribution of its Property to its Equity Interest holders, except:

(a) the Borrower may declare and pay dividends and distributions with respect to its Equity Interests payable solely in additional shares of its Equity Interests (other than Disqualified Capital Stock);

(b) Subsidiaries may declare and pay dividends to other Loan Parties ratably with respect to their Equity Interests;

(c) the Borrower and each Subsidiary may purchase, redeem or otherwise acquire its common or subordinated Equity Interests with the proceeds received from the substantially concurrent issue of new common or subordinated Equity Interests;

(d) the Borrower may make Restricted Payments in additional shares of its Equity Interests or warrants, options or other similar rights to purchase or acquire its Equity Interests, pursuant to and in connection with long-term incentive plans or other benefit plans or arrangements for directors, management, employees or consultants of the Borrower and its Subsidiaries;

(e) so long as no Default or Event of Default exists at the time of or after giving effect thereto, (i) the Borrower may repurchase, redeem or otherwise acquire any Equity Interests of the Borrower held by any current or former officer, director, consultant, or employee of the Borrower or its Subsidiaries pursuant to any equity subscription agreement, stock option agreement, shareholders', members' or partnership agreement or similar agreement, plan or arrangement or any Plan and (ii) to the extent such payments are deemed to be Restricted Payments, the Borrower may make payments under stock appreciation rights, phantom stock or other similar cash settled interests issued under the Borrower's long term incentive program; *provided* that the aggregate Restricted Payments made under this clause (h) shall not exceed $3,000,000 during any fiscal year;

(f) payments of cash, dividends, distributions, advances or other Restricted Payments by the Borrower to allow the payment of cash in lieu of the issuance of fractional units upon the exercise of options or warrants;

(g) (i) tax distributions paid in cash and other distributions paid-in-kind on the Series B Preferred Units in accordance with its terms and (ii) other Restricted Payments in respect of the Series B Preferred Units in accordance with its terms; *provided* that (x) no Default or Event of Default has occurred and is continuing or would result therefrom and after giving effect thereto and (y) such Restricted Payments are not funded with the proceeds of Revolving Loans;

(h) (i) tax distributions paid in cash and other distributions paid-in-kind on the Series A Preferred Units in accordance with its terms and (ii) following repayment of the Term Loans and the Series B Preferred Units, other Restricted Payments in respect of the Series A Preferred Units in accordance with its terms; *provided* that (x) no Default or Event of Default has occurred and is continuing or would result therefrom and after giving effect thereto, (y) after giving effect thereto (and any Indebtedness incurred in connection therewith), the Total Net Leverage Ratio calculated on a Pro Forma Basis as of the last day of the most recently ended Measurement Period is less than or equal to 1.00 to 1.00, and (z) such Restricted Payments are not funded with the proceeds of Revolving Loans; and

(i) so long as no Default or Event of Default exists at the time of or after giving effect thereto, other Restricted Payments in an aggregate amount not to exceed $7,500,000.

Section 9.05 Investments, Loans and Advances. The Borrower will not, and will not permit any Subsidiary to, make or permit to remain outstanding, or enter into any agreement to make, any Investments in or to any Person, except that the foregoing restriction shall not apply to:

(a) (i) Investments as of the Closing Date that are disclosed to the Lenders in Schedule 9.05 and (ii) Cash Equivalents;

(b) accounts receivable arising in the ordinary course of business;

(c) direct obligations of the United States or any agency thereof, or obligations guaranteed by the United States or any agency thereof, in each case maturing within one (1) year from the date of creation thereof;

(d) commercial paper maturing within one year from the date of creation thereof rated in one of the two highest grades by S&P or Moody's;

(e) deposits maturing within one (1) year from the date of creation thereof with, including certificates of deposit issued by, any Lender or any office located in the United States of any other bank or trust company which is organized under the laws of the United States or any state thereof, has capital, surplus and undivided profits aggregating at least $100,000,000 (as of the date of such bank or trust company's most recent financial reports) and has a short term deposit rating of no lower than A2 or P2, as such rating is set forth from time to time, by S&P or Moody's, respectively;

(f) deposits in money market funds investing exclusively in Investments described in Section 9.05(c), Section 9.05(d) or Section 9.05(e);

(g) Investments (i) made by the Borrower in or to the Guarantors, and (ii) made by any Subsidiary in or to the Borrower or any Guarantor;

(h) Investments in stock, obligations or securities received in settlement of debts arising from Investments permitted under this Section 9.05 owing to the Borrower or any Subsidiary as a result of a bankruptcy or other insolvency proceeding of the obligor in respect of such debts or upon the enforcement of any Lien in favor of the Borrower or any of its Subsidiaries; *provided* that the Borrower shall give the Administrative Agent prompt written notice in the event that the aggregate amount of all Investments held at any one time under this Section 9.05(h) exceeds $1,000,000;

(i) Investments constituting Indebtedness permitted under Section 9.02;

(j) credit provided to new or existing customers of the Loan Parties for the costs and expenses of extending service to such customers and for which such customers are contractually obligated to reimburse the Loan Party providing such credit in the ordinary course of business;

(k) Permitted Acquisitions;

(l) Investments representing non-cash consideration received with respect to dispositions permitted under Section 9.11;

(m) Investments in Hedging Agreements permitted by Section 9.17;

(n) (i) Investments in partnerships, joint ventures or any other Person in a similar business to the Loan Parties; *provided* that (1) Special Board Approval has been obtained with respect thereto, (2) no Default exists or results therefrom, and (3) after giving effect to such Investment (and any Indebtedness incurred in connection therewith), the Total Net Leverage Ratio calculated on a Pro Forma Basis as of the last day of the most recently ended Measurement Period is less than or equal to 2.00 to 1.00; and (ii) other Investments in T2 LaSalle Gathering Company LLC, T2 Eagle Ford Gathering Company LLC and their respective subsidiaries in an amount not to exceed $[____] per fiscal year;

(o) Investments made in connection with the Chapter 11 Emergence Transactions in accordance with Section 1.05;

(p) other Investments not to exceed $5,000,000 in the aggregate at any time; and

(q) loans or advances to officers, directors, employees, managers or consultants of the Borrower or its Subsidiaries for travel, entertainment, relocation and analogous ordinary business purposes (including payroll payments in the ordinary course of business) in an aggregate amount not to exceed $500,000 at any time outstanding.

Section 9.06 Nature of Business; International Operations. The Borrower will not, and will not permit any Subsidiary to, engage (directly or indirectly) in any business other than those businesses in which the Borrower and its Subsidiaries are engaged on the Closing Date or any

Related Business. From and after the date hereof, the Borrower and its Subsidiaries will not acquire or make any other expenditure (whether such expenditure is capital, operating or otherwise) in or related to, any real Property not located within the geographical boundaries of the United States of America.

Section 9.07 Use of Proceeds. The Borrower will not permit the proceeds of the Loans or the Letters of Credit to be used for any purpose other than those permitted by Section 8.16. Neither the Borrower nor any Person acting on behalf of the Borrower has taken or will take any action which might cause any of the Loan Documents to violate Regulations T, U or X or any other regulation of the Board of Governors, or to violate Section 7 of the Securities Exchange Act of 1934, as amended, or any rule or regulation thereunder, in each case as now in effect or as the same may hereinafter be in effect.

Section 9.08 ERISA Compliance. The Borrower will not, and will not permit any Subsidiary to, at any time:

(a) engage in, or permit any ERISA Affiliate to engage in, any transaction in connection with which the Borrower, a Subsidiary or any ERISA Affiliate could be subjected to either a material civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a material tax imposed by Chapter 43 of Subtitle D of the Code;

(b) fail to make, or permit any ERISA Affiliate to fail to make, full payment when due of all material amounts which, under the provisions of any Plan, agreement relating thereto or applicable law, the Borrower, a Subsidiary or any ERISA Affiliate is required to pay as contributions thereto;

(c) contribute to or assume an obligation to contribute to, or permit any ERISA Affiliate to contribute to or assume an obligation to contribute to (i) any employee welfare benefit plan, as defined in section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former employees of such entities, that contributions to or the obligation to contribute to may not be terminated by such entities in their sole discretion at any time without any material liability, or (ii) any employee pension benefit plan, as defined in section 3(2) of ERISA, including a multiemployer plan as defined in section 3(37) or 4001(a)(3) of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code, except where such contributions would not reasonably be expected to result in a Material Adverse Effect; and

(d) acquire, or permit any ERISA Affiliate to acquire, an interest in any Person that causes such Person to become an ERISA Affiliate with respect to the Borrower or a Subsidiary or with respect to any ERISA Affiliate of the Borrower or a Subsidiary if such Person sponsors, maintains or contributes to, or at any time in the six year period preceding such acquisition has sponsored, maintained, or contributed to, any employee pension benefit plan, as defined in section 3(2) of ERISA, (i) that is a multiemployer plan as defined in section 3(37) or 4001(a)(3) of ERISA or (ii) that is subject to Title IV of ERISA under which the actuarial present value of the benefit liabilities under such plan exceeds the current value of the assets (computed on a plan termination basis in accordance with Title IV of ERISA) of such plan allocable to such benefit liabilities.

Section 9.09 Sale or Discount of Receivables. Except (a) in connection with the Chapter 11 Emergence Transactions, (b) sales otherwise permitted pursuant to Section 9.11 and (c) for receivables obtained by the Borrower or any Subsidiary out of the ordinary course of business or the settlement of joint interest billing accounts in the ordinary course of business or discounts granted to settle collection of accounts receivable or the sale of defaulted accounts arising in the ordinary course of business in connection with the compromise or collection thereof and not in connection with any financing transaction, the Borrower will not, and will not permit any Subsidiary to, discount or sell (with or without recourse) any of its notes receivable or accounts receivable.

Section 9.10 Mergers, Etc. Except in connection with the Chapter 11 Emergence Transactions in accordance with Section 1.05, the Borrower will not, and will not permit any Subsidiary to, merge into or with or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Property to any other Person (whether now owned or hereafter acquired) (any such transaction, a "**consolidation**"), or liquidate or dissolve, except that:

(a) the Borrower or any Subsidiary may participate in a consolidation with any other Person; *provided* that (i) no Default is continuing, (ii) any such consolidation would not cause a Default hereunder, (iii) immediately after the consummation of such consolidation and related transactions, the Total Net Leverage Ratio calculated on a Pro Forma Basis as of the last day of the most recently ended Measurement Period is either (x) less than or equal to 2.00 to 1.00 or (y) less than or equal to the Total Net Leverage Ratio of the Borrower and its Subsidiaries as of the last day of the most recently ended Measurement Period without giving effect to the consummation of such consolidation and related transactions, (iv) if the Borrower consolidates with any Person, the Borrower shall be the surviving Person, and (v) if any Subsidiary consolidates with any Person (other than the Borrower or another Subsidiary) and such Subsidiary is not the surviving Person, such surviving Person shall become a Domestic Subsidiary of the Borrower and shall expressly assume in writing (in form and substance satisfactory to the Administrative Agent (acting at the direction of the Required Lenders)) all obligations of such Subsidiary under the Loan Documents;

(b) any Subsidiary may participate in a consolidation with the Borrower (*provided* that the Borrower shall be the continuing or surviving corporation) or any other Subsidiary and if one of such Subsidiaries is a Wholly-Owned Subsidiary, then the surviving Person shall be a Wholly-Owned Subsidiary;

(c) a Subsidiary may wind-up, dissolve, liquidate or sell or transfer its assets if (i) all of its Property is transferred to the Borrower or a Wholly-Owned Subsidiary and (ii) the Loan Party acquiring such Property promptly complies with its obligations under Sections 8.12 and 8.14; and

(d) any Subsidiary may sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Property to any other Person to the extent permitted by Section 9.11.

Section 9.11 Sale of Properties. The Borrower will not, and will not permit any Subsidiary to, sell, assign, farm-out, convey or otherwise transfer any Property except for:

(a) dispositions of cash and Cash Equivalents in the ordinary course of business and in connection with the consummation of the Chapter 11 Emergence Transactions and other transactions permitted by this Agreement;

(b) the sale of inventory in the ordinary course of business;

(c) the sale or transfer of obsolete or worn out property and property no longer used or useful in the conduct of the business of the Borrower and its Subsidiaries (including allowing any registration or application for registration of any Intellectual Property that is no longer used or useful, to lapse or go abandoned or be invalidated), whether now owned or hereafter acquired, in the ordinary course of business or is replaced by replacement property of at least comparable value and use;

(d) issuances of distributions or other Restricted Payments permitted pursuant to Section 9.04;

(e) Restricted Payments permitted by Section 9.04 and Liens permitted by Section 9.03;

(f) the transfer of Property to another Loan Party;

(g) Asset Sales in connection with the Chapter 11 Emergence Transactions in accordance with Section 1.05;

(h) the transfer of Property occurring in connection with a transaction permitted by, and made in compliance with the provisions of, Section 9.10;

(i) [reserved];

(j) other Asset Sales; provided that (i) no Event of Default has occurred and is continuing at the time of such Asset Sale nor will an Event of Default occur after giving effect thereto, (ii) such Asset Sale is for fair market value (as determined in good faith by the Borrower), (iii) at least 75% of the proceeds of such Asset Sale consist of cash or Cash Equivalents, and (iv) any Net Sale Proceeds of such Asset Sale shall be applied pursuant to Section 3.04(b)(ii);

(k) dispositions of accounts receivables in connection with the collection or compromise thereof in the ordinary course of business to the extent permitted under Section 9.09;

(l) grants of Leases, subleases, non-exclusive licenses or non-exclusive sublicenses (including the provision of software under an open source license), easements, rights of way or similar rights or encumbrances in each case in the ordinary course of business and which do not materially interfere with the business of the Borrower and its Subsidiaries;

(m) transfers of Property that has suffered a Casualty Event; and

(n) other Asset Sales having a fair market value not in excess of $3,000,000 in the aggregate in any fiscal year.

Section 9.12 Environmental Matters. Except for such matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, with respect to the Properties and any operations thereat or associated therewith, the Borrower will not, and will not permit any Subsidiary to, be in violation of Environmental Law, have any Release or threatened Release of Hazardous Materials other than those that are in compliance with Environmental Law, allow any exposure to Hazardous Materials that could reasonably be expected to form the basis for a claim for damages or compensation, or be required under Environmental Law to perform any Remedial Work.

Section 9.13 Transactions with Affiliates. The Borrower will not, and will not permit any Subsidiary to, enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property or the rendering of any service, with any Affiliate (other than the Borrower or any Guarantor), except (a) in connection with the Chapter 11 Emergence Transactions, (b) Restricted Payments permitted by Section 9.04, (c) Investments permitted by Section 9.05, (d) transactions approved by the Board of Directors of the Borrower or the conflicts committee thereof (acting in good faith), and (e) transactions that are otherwise permitted under this Agreement and are upon fair and reasonable terms no less favorable to it, when taken as a whole, than it would obtain in a comparable arm's length transaction with a Person not an Affiliate.

Section 9.14 Subsidiaries. The Borrower will not, and will not permit any Subsidiary to, create or acquire any additional Subsidiary unless the Borrower gives prior written notice to the Administrative Agent of such creation or acquisition and complies with Section 8.14(a). The Borrower shall not, and shall not permit any Subsidiary to, issue, sell, assign or otherwise dispose of any Equity Interests in any Subsidiary except in compliance with Section 9.10(a), Section 9.11(f), Section 9.11(h), Section 9.11(j) or Section 9.11(n). Neither the Borrower nor any Subsidiary shall have any Foreign Subsidiaries.

Section 9.15 [Reserved.].

Section 9.16 Negative Pledge Agreements; Dividend Restrictions. The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or suffer to exist any material agreement or arrangement (other than (a) the Loan Documents, (b) [reserved], (c) Capital Leases creating Liens permitted by Section 9.03(c), but then only on the Property that is the subject of such Capital Lease, (d) documents evidencing or securing Purchase Money Indebtedness creating Liens permitted by Section 9.03(c), but then only on the Property that is the subject of such Purchase Money Indebtedness, (e) documents creating Liens which are described in clauses (g) or (h) of the definition of "Excepted Liens", but then only on the Property that is the subject of the applicable lease or license described in such clause (g) or (h)), (f) customary restrictions and conditions on transfers and investments contained in any agreement relating to the sale of any asset or any subsidiary pending the consummation of such sale, (g) in the case of any Person that becomes a Subsidiary after the Closing Date, any agreement in effect at the time such Person so becomes a Subsidiary, so long as such agreement was not entered into in contemplation of such Person becoming such a Subsidiary, (h) in the case of any assets acquired after the Closing

Date, any agreement in effect at the time of such acquisition which pertains to such assets and only such assets and is assumed in connection with such acquisition, so long as such agreement was not entered into in contemplation of such acquisition, and (i) customary provisions in joint venture agreements and other similar agreements permitted by Section 9.05 and applicable to joint ventures and Equity Interests therein) that in any way prohibits or restricts the granting, conveying, creation or imposition of any Lien on any of its Property in favor of the Administrative Agent and the Lenders, or that requires the consent of or notice to other Persons in connection therewith, or that restricts any Subsidiary from paying dividends or making distributions to the Borrower or any Guarantor, or that requires the consent of or notice to other Persons in connection therewith.

Section 9.17 Hedging Agreements. The Borrower will not, and will not permit any Subsidiary to, enter into any Hedging Agreements with any Person other than Hedging Agreements in respect of commodities or interest rates (i) with an Approved Counterparty and (ii) that are entered into for the purpose of hedging exposure to interest rates or commodity prices and that are not for speculative purposes. In no event shall any Hedging Agreement contain any requirement, agreement or covenant for the Borrower or any Subsidiary to post collateral or margin to secure their obligations under such Hedging Agreement or to cover market exposures, other than cash collateral arrangements and Letters of Credit issued hereunder (and the proceeds thereof).

Section 9.18 Holding Company. The Borrower will remain a holding company and will not own any real property, immovable property, or other assets of material value other than Equity Interests in Subsidiaries, furniture, furnishings and equipment acquired and maintained in the ordinary course of business, Investments to the extent permitted hereunder, assets acquired that are promptly, and in any event within 30 days of acquisition by the Borrower, transferred, contributed or otherwise assigned by the Borrower to one or more of the other Loan Parties, and interests in contracts customarily entered into by the Borrower in the ordinary course of its business.

Section 9.19 Sale and Leaseback. The Borrower shall not, and shall not permit any Subsidiary to, enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any Property, whether now owned or hereafter acquired, and thereafter rent or lease such Property which it intends to use for substantially the same purpose or purposes as the Property being sold or transferred.

Section 9.20 Amendments to Organization Documents, Material Contracts, or Fiscal Year End; Prepayments of other Indebtedness.

(a) From and after the consummation of the Chapter 11 Emergence Transactions, the Borrower shall not, and shall not permit any Subsidiary to, amend, supplement or otherwise modify (or permit to be amended, supplemented or modified) its Organization Documents; *provided* that the Borrower or any Subsidiary may amend, supplement or otherwise modify any of its Organization Documents in any manner that (A) is not adverse to the Lenders in any material respect and (B) does not conflict with any of the Loan Documents, subject to compliance with the provisions of Section 8.01(j), Section 8.01(k) and Section 8.12 to the full extent applicable.

(b) The Borrower shall not, and shall not permit any Subsidiary to, amend, supplement or otherwise modify (or permit to be amended, supplemented or modified) any Material Contract in a manner that would be adverse to the Lenders in any material respect.

(c) The Borrower shall not amend, supplement or otherwise modify (or permit to be amended, supplemented or modified) the agreements and other instruments governing the New Preferred Units in a manner that would be materially adverse to the Lenders;

(d) The Borrower shall not, and shall not permit any Subsidiary to, change the last day of its fiscal year from December 31 of each year, or the last days of the first three fiscal quarters in each of its fiscal years from March 31, June 30 and September 30 of each year, respectively.

(e) The Borrower shall not, and shall not permit any Subsidiary to, make (or give any notice in respect of) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, change of control or similar event of, any outstanding Subordinated Indebtedness, except as otherwise permitted by this Agreement.

Section 9.21 Anti-Terrorism Law; Anti-Money Laundering.

(a) The Borrower shall not, and shall not permit any Subsidiary to, directly or indirectly, (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in Section 7.26, (ii) deal in, or otherwise engage in any transaction relating to, any Property or interests in Property blocked pursuant to the Executive Order or any other Anti-Terrorism Law, or (iii) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and the Borrower shall deliver to any Lender any certification or other evidence requested from time to time by such Lender confirming the Borrower's and the Subsidiaries' compliance with this Section 9.21(a)).

(b) The Borrower shall not, and shall not permit any Subsidiary to, cause or permit any of the funds of the Borrower or any Subsidiary that are used to repay the Loans to be derived from any unlawful activity with the result that the making of the Loans would be in violation of any Governmental Requirement.

Section 9.22 Embargoed Person. The Borrower shall not, and shall not permit any Subsidiary to, permit (a) any of the funds or Properties of the Borrower or any Subsidiary that are used to repay the Loans to constitute Property of, or be beneficially owned directly or indirectly by, any Person subject to sanctions or trade restrictions under United States law ("**Embargoed Person**" or "**Embargoed Persons**") that is identified on (i) the "List of Specially Designated Nationals and Blocked Persons" maintained by OFAC and/or on any other similar list maintained by OFAC pursuant to any authorizing statute including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Order or Governmental Requirement promulgated thereunder, with the result that the investment in the Borrower or any Subsidiary

(whether directly or indirectly) is prohibited by any Governmental Requirement, or the Loans would be in violation of a Governmental Requirement, or (ii) the Executive Order or (b) any Embargoed Person to have any direct or indirect interest of any nature whatsoever in the Borrower or any Subsidiary, with the result that the investment in the Borrower or any Subsidiary (whether directly or indirectly) is prohibited by a Governmental Requirement or the Loans are in violation of a Governmental Requirement.

Section 9.23 Deposit Accounts, Securities Accounts and Commodity Accounts. Subject to Section 8.20, the Borrower will not, and will not permit any Subsidiary to, deposit any funds, securities or commodities in any Deposit Account (other than Excluded Accounts), Securities Account or Commodity Account (each, as defined in the Uniform Commercial Code, as it may be amended, from time to time in effect in the State of New York), as applicable, unless such account is subject to a valid Lien in favor of the Administrative Agent for the benefit of the Lenders and the other Secured Parties and a control agreement in form and substance reasonably satisfactory to the Administrative Agent (acting at the direction of the Required Lenders).

ARTICLE X
EVENTS OF DEFAULT; REMEDIES

Section 10.01 Events of Default. One or more of the following events shall constitute an "**Event of Default**":

(a) The Borrower shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof, by acceleration or otherwise.

(b) The Borrower shall fail to pay any interest on any Loan or any fee or other amount (other than an amount referred to in Section 10.01(a)) payable under any Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days.

(c) Any representation or warranty made or deemed made by or on behalf of any Loan Party or any Subsidiary of the Borrower in or in connection with any Loan Document or any amendment or modification of any Loan Document or waiver under such Loan Document, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made.

(d) The Borrower or any Subsidiary shall fail to observe or perform any covenant, condition or agreement contained in Section 8.01(j), Section 8.02, Section 8.03 (with respect to the Borrower only), Section 8.07, Section 8.14, Section 8.16, or Section 8.20 or in Article IX.

(e) Any Loan Party or any Subsidiary of the Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in Section 10.01(a), Section 10.01(b) or Section 10.01(d)) or any other Loan Document,

and such failure shall continue unremedied for a period of thirty (30) days after the earlier to occur of (i) notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of any Lender) or (ii) a Responsible Officer, or a Responsible Officer of such Subsidiary, otherwise becoming aware of such default.

(f) The Borrower or any Subsidiary shall fail to make any payment of principal of or interest on any Material Indebtedness, when and as the same shall become due and payable, and such failure to pay shall extend beyond any applicable period of grace.

(g) Any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits, in each case after expiry of the applicable grace period, the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the Redemption thereof or any offer to Redeem to be made in respect thereof, prior to its scheduled maturity or require the Borrower or any Subsidiary to make an offer in respect thereof; *provided* that clause (g) shall not apply to secured Indebtedness that is permitted hereunder, becomes due as a result of the voluntary sale or transfer of the property securing such Indebtedness if such sale or transfer is permitted hereunder and is discharged in full from the proceeds of such sale or transfer.

(h) An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered.

(i) The Borrower or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in Section 10.01(h), (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, or (vi) take any limited liability company or other action for the purpose of effecting any of the foregoing.

(j) [Reserved.]

(k) (i) One or more judgments for the payment of money in an aggregate amount in excess of $9,000,000 (to the extent not covered by independent third party insurance as to which the insurer does not dispute coverage and is not subject to an insolvency proceeding) or (ii) any one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, shall be rendered against the

Borrower, any Subsidiary or any combination thereof and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within thirty (30) days from the entry thereof.

(l) This Agreement and the other Loan Documents after delivery thereof shall for any reason, except to the extent permitted by the terms thereof, cease to be in full force and effect and valid, binding and enforceable in accordance with their terms against any Loan Party party thereto, or shall be repudiated by any of them, or cease to create a valid and perfected Lien of the priority required thereby on any material portion of the Collateral purported to be covered thereby, except to the extent permitted by the terms of this Agreement or results from the failure of the Administrative Agent to maintain possession of certificates actually delivered to it representing securities pledged to it hereunder or to file Uniform Commercial Code continuation statements.

(m) An ERISA Event shall have occurred that, in the opinion of the Required Lenders, when together with all other ERISA Events that have occurred, could reasonably be expected to result in the liability of the Borrower and its Subsidiaries in an aggregate amount exceeding $9,000,000 in the aggregate.

(n) A Change in Control shall occur.

Section 10.02 Remedies.

(a) In the case of an Event of Default other than one described in Section 10.01(h) or Section 10.01(i), at any time thereafter during the continuance of such Event of Default, the Administrative Agent may, and at the request of the Required Lenders, shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower and the Guarantors accrued hereunder and under the Loan Documents, shall become due and payable immediately, without presentment, demand, protest, or other further notice of any kind, all of which are hereby waived by the Borrower and each Guarantor; and in case of an Event of Default described in Section 10.01(h) or Section 10.01(i), the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and the other obligations of the Borrower and the Guarantors accrued hereunder and the other Loan Documents, shall automatically become due and payable, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration, or other notice of any kind, all of which are hereby waived by the Borrower and each Guarantor.

(b) In the case of the occurrence of an Event of Default, the Administrative Agent and the Lenders will have all other rights and remedies available at law and equity.

(c) All proceeds realized from the liquidation or other disposition of Collateral or otherwise received after maturity of the Loans, whether by acceleration or otherwise, shall be applied:

(i) *first*, to payment or reimbursement of that portion of the Secured Obligations constituting fees, expenses and indemnities payable to the Administrative Agent in its capacity as such;

(ii) *second*, pro rata to payment or reimbursement of that portion of the Secured Obligations constituting fees, the Call Premium, expenses and indemnities payable to the Lenders;

(iii) *third*, pro rata to payment of accrued interest on the Loans;

(iv) *fourth*, *pro rata* to payment of (A) principal outstanding on the Loans, (B) Secured Obligations referred to in clause (b) of the definition of Secured Obligations owing to a Secured Hedging Agreement Counterparty, (C) Secured Obligations referred to in clause (c) of the definition of Secured Obligations owing to a Bank Products Provider, and (D) any other Secured Obligations; and

(v) *fifth*, any excess, after all of the Secured Obligations shall have been indefeasibly paid in full in cash, shall be paid to the Borrower or as otherwise required by any Governmental Requirement.

Notwithstanding the foregoing, Bank Products and Secured Hedging Agreements shall be excluded from the application described above if the Administrative Agent has not received a Secured Party Designation Notice, together with such supporting documentation as the Administrative Agent may request, from the applicable Bank Products Provider or Secured Hedging Agreement Counterparty. Each Bank Products Provider and Secured Hedging Agreement Counterparty not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article XI for itself and its Affiliates as if a "Lender" party hereto.

ARTICLE XI
THE AGENT

Section 11.01 Appointment and Authority. Each of the Lenders and Issuing Banks hereby irrevocably appoints Wilmington, to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof and thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article XI are solely for the benefit of the Administrative Agent, the Lenders and each Issuing Bank, and neither the Borrower nor any Subsidiary shall have any rights as a third party beneficiary of any such provisions. Without limiting the generality of the foregoing, the Administrative Agent is hereby expressly authorized to (a) execute any and all documents (including releases) with respect to the Collateral and the

rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Security Instruments and (b) negotiate, enforce or settle any claim, action or proceeding affecting the Lenders in their capacity as such, at the written direction of the Required Lenders, which negotiation, enforcement or settlement will be binding upon each Secured Party.

Section 11.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall, if applicable, have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include, if applicable, the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 11.03 Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing (it being understood that the term "agent" used herein and in the other Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine or any other applicable law; rather, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties);

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.02 or 12.02); *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability, if the Administrative Agent is not indemnified to its satisfaction, or that is contrary to any Loan Document or applicable law including, for the avoidance of doubt any action that may be in violation of the automatic stay under the Bankruptcy Code;

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to

disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity; and

(iv) shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 12.02 and Section 10.02) or (ii) otherwise hereunder or under any other Loan Document or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith INCLUDING ITS OWN ORDINARY NEGLIGENCE, except for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article VI or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or as to those conditions precedent expressly required to be to the Administrative Agent's satisfaction, (vi) the existence, value, perfection, or priority of any collateral security or the financial or other condition of the Loan Parties and the Subsidiaries or any other obligor or guarantor, or (vii) any failure by any Loan Party or any other Person (other than itself) to perform any of its obligations hereunder or under any other Loan Document or the performance or observance of any covenants, agreements, or other terms or conditions set forth herein or therein.

(d) Nothing in this Agreement shall require the Administrative Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder. The Administrative Agent shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or

regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

Section 11.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, the issuance of a Letter of Credit or a withdrawal from the Letter of Credit Account, as applicable, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit or such withdrawal from the Letter of Credit Account, as the case may be. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 11.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article XI and Section 12.03(b) and (c) shall apply to any such sub agent and to the Related Parties of the Administrative Agent and any such sub agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Related Parties were named herein as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 11.06 Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders, each Issuing Bank and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a bank as a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and each Issuing Bank, appoint a successor Administrative Agent meeting the qualifications set forth above, *provided* that if no such successor Administrative Agent has been appointed by the 30th day after the resigning Administrative Agent gave notice of its resignation, the retiring Administrative Agent's

resignation shall nevertheless thereupon become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or any Issuing Bank under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed), (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and Issuing Bank directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 11.06. and (c) the total amount on deposit in the Letter of Credit Account shall be transferred by the Administrative Agent to a deposit account with another depository institution that shall be designated in writing by Required Lenders on or prior to such date. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this paragraph) and the total amount on deposit in the Letter of Credit Account shall be transferred by the Administrative Agent to a deposit account designated in writing by the successor Administrative Agent (if such amounts were not already transferred as provided above in this paragraph). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article XI and Section 12.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring Administrative Agent was acting as Administrative Agent and (ii) after such resignation for as long as the retiring Administrative Agent continues to act in any capacity hereunder or under the other Loan Documents, including acting as collateral agent or otherwise holding any collateral security on behalf of any of the Secured Parties.

Section 11.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and each Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. The Administrative Agent shall not be required to keep itself informed as to the performance or observance by the Borrower or any of its Subsidiaries of this Agreement, the Loan Documents, or any other document referred to or provided for herein or to inspect the Properties or books of the Loan Parties or the Subsidiaries. Except for notices, reports, and other documents and information expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information

concerning the affairs, financial condition, or business of the Loan Parties (or any of their Affiliates) which may come into possession of the Administrative Agent or any of its Affiliates. Each other party hereto will consult with its own legal counsel to the extent that it deems necessary in connection with the Loan Documents and the matters contemplated therein.

Section 11.08 Successors By Merger, Etc. Any corporation or association into which the Administrative Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Administrative Agent is a party, will be and become the successor the Administrative Agent under this Agreement and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

Section 11.09 Authority of Administrative Agent to Release Collateral and Liens. Each Lender and each Issuing Bank hereby authorizes, and each other Person accepting the benefit of the Liens created by the Security Instruments shall be deemed to have authorized, the Administrative Agent to release (a) any Collateral that is permitted to be sold or released pursuant to the terms of the Loan Documents, and (b) any Mortgaged Property that does not constitute Material Real Property if any Building (as defined in the applicable Flood Insurance Regulation) or Manufactured (Mobile) Home (as defined in the applicable Flood Insurance Regulation) is situated on such Mortgaged Property and the Administrative Agent, in its sole discretion, determines that the costs, financial and otherwise, of obtaining or maintaining a Lien or complying with all Governmental Requirements with respect to such Lien outweigh the benefit to the Secured Parties of the security afforded thereby. Each Lender and each Issuing Bank hereby authorizes, and each other Person accepting the benefit of the Liens created by the Security Instruments shall be deemed to have authorized, the Administrative Agent to execute and deliver to the Borrower (or file, if appropriate), at the Borrower's sole cost and expense, any and all releases of Liens, termination statements, assignments or other documents reasonably requested by the Borrower in connection with any sale or other disposition of Property to the extent such sale or other disposition is permitted by the terms of Section 9.11 or is otherwise authorized by the terms of the Loan Documents. To the extent any Property is sold, assigned, conveyed or otherwise transferred as expressly permitted by Section 9.11 to any Person other than a Loan Party, such Collateral shall be sold, assigned, conveyed or otherwise transferred free and clear of all Liens created by the Loan Documents.

Section 11.10 Action by the Administrative Agent. The Administrative Agent shall have no duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders or Issuing Banks, as applicable, as shall be necessary under the circumstances as provided in Section 10.02 or Section 12.02) and in all cases the Administrative Agent shall be fully justified in failing or refusing to act hereunder or under any other Loan Documents unless it shall (a) receive written instructions from the Required Lenders (or such other number or percentage of the Lenders, as applicable, as shall be necessary under the circumstances as provided in Section 12.02) specifying the action to be taken and (b) be indemnified to its satisfaction by the Lenders, as applicable, against any and all

liability and expenses which may be incurred by it by reason of taking or continuing to take any such action. The instructions as aforesaid and any action taken or failure to act pursuant thereto by the Administrative Agent shall be binding on all of the Lenders and Issuing Banks. If a Default has occurred and is continuing, then the Administrative Agent shall take such action with respect to such Default as shall be directed by the requisite Lenders in the written instructions (with indemnities) described in this Section, *provided* that, unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interests of the Lenders. In no event, however, shall the Administrative Agent be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this Agreement, the Loan Documents or applicable law.

Section 11.11 Certain Secured Parties. No Bank Products Provider or Secured Hedging Agreement Counterparty that obtains the benefit of Section 10.02(c) or any Collateral by virtue of the provisions hereof or any Security Instrument shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of any Security Instrument) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. By accepting the benefits of the Collateral, each Bank Products Provider and Secured Hedging Agreement Counterparty shall be deemed to have appointed the Administrative Agent as its agent and agreed to be bound by the Credit Documents as a Secured Party, subject to the limitations set forth in this Section 11.11. Notwithstanding any other provision of this Article XI to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations consisting of Bank Products or Secured Hedging Agreements except to the extent expressly provided herein and unless the Administrative Agent has received a Secured Party Designation Notice of such Secured Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Bank Products Provider or Secured Hedging Agreement Counterparty. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations consisting of Bank Products or Secured Hedging Agreements in the case of a Maturity Date.

ARTICLE XII
MISCELLANEOUS

Section 12.01 Notices.

(a) Notices Generally. Subject to Section 12.01(b), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

(i) if to the Borrower, to it at the following:

[Southcross Energy Partners LLC][9]
1717 Main Street, Suite 5200
Dallas, Texas 75201
Attn: James W. Swent III, Chief Executive Officer, Kelly J. Jameson, Secretary
Fax: (214) 979-3710
Email: Jay.Swent@southcrossenergy.com, Kelly.Jameson@southcrossenergy.com

with a copy to (which shall not constitute notice):

Davis Polk & Wardwell LLP
450 Lexington Ave
New York, NY 10017
Attn: Darren S. Klein, Jon Finelli
Fax: (212) 701-5725
Email: darren.klein@davispolk.com, jon.finelli@davispolk.com

and

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
Attn: Joseph G. Minias and Weston T. Eguchi
Fax: (212) 728-8881
Email: jminias@willkie.com, weguchi@willlkie.com

(ii) if to the Administrative Agent, to it at the following:

Wilmington Trust, National Association.
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Attn: Nikki Kroll
Fax: (612) 217-5651
Email: nkroll@wilmingtontrust.com

with copies to (which shall not constitute notice):

Arnold & Porter Kaye Scholer LLP
250 West 55th Street
New York, NY 10019-9710
Attn: Alan Glantz
Fax: (212) 836-6763
Email: alan.glantz@arnoldporter.com

(iii) if to [_____], as Issuing Bank, to it at the following:

[9] If the Credit Bid Transaction (as defined in the Plan) is implemented, Newco.

[_____]

(iv) if to any other Lender, to it at its address (or facsimile number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 12.01(b) below, shall be effective as provided in Section 12.01(b).

(b) Electronic Communications.

(i) Notices and other communications to the Lenders and the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender or any Issuing Bank pursuant to Article II, Article III, Article IV and Article V if such Lender or such Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article(s) by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(ii) Unless the Administrative Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (B) of notification that such notice or communication is available and identifying the website address therefore.

(c) Change of Address, Etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(d) PLATFORM. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS RELATED PARTIES WARRANTS THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS OR THE ADEQUACY OF THE PLATFORM AND EACH EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR

STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS IS MADE BY THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY SUCH PERSON IS FOUND IN A FINAL AND NON-APPEALABLE RULING BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH PERSON'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

Section 12.02 Waivers; Amendments.

(a) No failure on the part of the Administrative Agent, any Issuing Bank or any Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege, or any abandonment or discontinuance of steps to enforce such right, power or privilege, under any of the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any of the Loan Documents preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by Section 12.02(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof nor any Security Instrument nor any provision thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders, and acknowledged by the Administrative Agent, or by the Borrower and the Administrative Agent with the consent of the Required Lenders; *provided* that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder, or reduce any other Secured Obligations hereunder or under any other Loan Document, without the written consent of each Lender adversely affected thereby, *provided, however*, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate, (iii) postpone the scheduled date of payment or prepayment of the principal amount of any Loan (excluding

mandatory prepayments pursuant to Section 3.04(b)(i), (b)(ii), (b)(iii), (b)(iv) or (b)(v)) or any interest thereon, or any fees payable hereunder, or any other Secured Obligations hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, or postpone or extend the Termination Date or Maturity Date of any Loan without the written consent of each Lender adversely affected thereby, (iv) change Section 4.01(b) or Section 4.01(c) in a manner that would alter the *pro rata* sharing of payments required thereby, without the written consent of each Lender, (v) waive or amend Section 3.04(c), Section 6.01, Section 10.02(c) or Section 12.14 or change the definition of the terms "Domestic Subsidiary", "Foreign Subsidiary" or "Subsidiary", without the written consent of each Lender (other than any Defaulting Lender), (vi) release any Guarantor (except as permitted pursuant to the Guaranty and Collateral Agreement or in connection with a sale of such Guarantor permitted under Section 9.14) or release all or substantially all of the Collateral, without the written consent of each Lender (other than any Defaulting Lender), (vii) change any of the provisions of this Section 12.02(b), Section 10.02(c), or the definitions of "Required Lenders", "Required Class Lenders", "Required Initial Lenders", "Required Term Lenders" or "Required Revolving Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or under any other Loan Documents or make any determination or grant any consent hereunder or any other Loan Documents, without the written consent of each Lender other than any Defaulting Lender, (viii) modify or waive the application of prepayments under Sections 3.04(b)(i)(A), (b)(iii), (b)(iv), (b)(v), (f)(i) and/or (f)(iii) or amend or waive the Call Premium with respect to Term Loans, without the written consent of the Required Term Lenders, (ix) modify or waive the application of prepayments under Sections 3.04(b)(i)(A), (b)(i)(B), (f)(i) and/or (f)(ii) or amend or waive the Call Premium with respect to Revolving Commitments, without the written consent of the Required Revolving Lenders, (x) amend, waive or otherwise modify any term or provision which directly affects Lenders under one or more Class and does not directly affect Lenders under any other Class, in each case, without the written consent of the Required Class Lenders under such applicable Class (and in the case of multiple Classes which are affected, such Required Class Lenders shall consent together as one Class); *provided, however*, that the amendments, waivers and modifications described in this clause (x) shall not require the consent of any Lenders other than (1) the Required Class Lenders under such applicable Class and (2) in the case of any waiver that otherwise would be subject to clauses (i) through (ix) above, each Lender adversely affected thereby under the applicable Class or Classes; [or (xi) modify Section 2.07 (or any definitions related thereto) in any manner that is adverse to the Issuing Banks that have Letters of Credit outstanding without the consent of each such Issuing Bank;][10] *provided, further*, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or any Issuing Bank hereunder or under any other Loan Document without the prior written consent of the Administrative Agent or each such Issuing Bank, as the case may be; *provided, further*, that any Fee Letter may be amended, or rights or privileged thereunder waived in a writing executed only by the parties thereto (without the need for the consent of any other party hereto). Notwithstanding the foregoing, (x) any supplement to Schedule 7.14 (Subsidiaries) shall be effective simply by delivering to the Administrative Agent a supplemental schedule clearly marked as such and, upon receipt, the Administrative Agent will promptly deliver a copy thereof to the Lenders, (y) the Borrower (or other applicable Loan Party) and the Administrative Agent may amend this Agreement or any other Loan Document without the consent of the Lenders in order to correct,

[10] NTD: Is this intended to be included?

amend or cure any ambiguity, inconsistency or defect or correct any typographical error or other manifest error in any Loan Document if the same is not objected to in writing by Lenders constituting the Required Lenders within five (5) Business Days after the Administrative Agent delivers written notice thereof to the Lenders, and (z) the Administrative Agent and the Borrower (or other applicable Loan Party) may enter into any amendment, modification or waiver of this Agreement or any other Loan Document or enter into any agreement or instrument to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Mortgaged Property or Property to become Mortgaged Property to secure the Secured Obligations for the benefit of the Lenders or as required by any Governmental Requirement to give effect to, protect or otherwise enhance the rights or benefits of any Lender under the Loan Documents without the consent of any Lender.

Section 12.03 Expenses, Indemnity; Damage Waiver.[11]

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable and documented out-of- pocket expenses incurred by the Administrative Agent and its Affiliates and by the Lenders (but limited, in the case of legal fees, charges and disbursements, to the reasonable and documented fees, charges and disbursements of one primary counsel to the Administrative Agent and its Affiliates and, if necessary, of one local counsel in any relevant material jurisdiction and (y) one primary counsel to the Lenders, taken as a whole, and, if necessary, of one local counsel in any relevant material jurisdiction, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration (both before and after the execution hereof and including advice of counsel to the Administrative Agent as to the rights and duties of the Administrative Agent and the Lenders with respect thereto) of this Agreement and the other Loan Documents and any amendments, modifications or waivers of or consents related to the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all costs, expenses, Taxes, assessments and other charges incurred by the Administrative or any Lender in connection with any filing, registration, recording or perfection of any security interest contemplated by this Agreement or any Security Instrument or any other document referred to therein and (iii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender (but limited, in the case of legal fees, charges and disbursements, to the reasonable and documented fees, charges and disbursements of (x) one primary counsel to the Administrative Agent and, if necessary, of one local counsel in any relevant material jurisdiction and (y) one primary counsel to the Lenders, taken as a whole, and, if necessary, of one local counsel in any relevant material jurisdiction) in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section 12.03 or in connection with the Loans made and Letters of Credit issued hereunder, including, without limitation, all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit. Notwithstanding anything to the contrary contained in this Section 12.03(a) or elsewhere in any of the Loan Documents, neither the Borrower nor any Subsidiary shall be obligated to pay or reimburse any Person for any costs, expenses, fees, taxes or other charges of any nature whatsoever that are incurred or payable by any Person in connection with any assignment referred to in Section

[11] NTD: Are Issuing Banks being picked up in subclauses (i) or (iv) of this clause (a), or in clause (c) below (as reflected in the DIP agreement)?

12.04(b), any participation referred to in Section 12.04(d) or any pledge or security interest referred to in Section 12.04(f).

(b) INDEMNIFICATION BY THE BORROWER. THE BORROWER SHALL INDEMNIFY ADMINISTRATIVE AGENT (AND ANY SUB-AGENT THEREOF), THE AD HOC GROUP, EACH INITIAL EXIT LENDER, EACH LENDER, AND EACH RELATED PARTY OF ANY OF THE FOREGOING PERSONS (EACH SUCH PERSON BEING CALLED AN "**INDEMNITEE**") AGAINST, AND DEFEND AND HOLD EACH INDEMNITEE HARMLESS FROM, ANY AND ALL LOSSES, CLAIMS, DAMAGES, PENALTIES, LIABILITIES AND RELATED EXPENSES (BUT LIMITED, IN THE CASE OF LEGAL FEES AND EXPENSES, TO THE ACTUAL REASONABLE AND DOCUMENTED OUT-OF-POCKET FEES, DISBURSEMENTS AND OTHER CHARGES OF (I) ONE COUNSEL TO THE ADMINISTRATIVE AGENT AND ITS RELATED PARTIES, TAKEN AS A WHOLE, AND, IF REASONABLY NECESSARY, ONE LOCAL COUNSEL IN ANY RELEVANT MATERIAL JURISDICTION TO THE ADMINISTRATIVE AGENT AND ITS RELATED PARTIES, TAKEN AS A WHOLE AND (II) ONE COUNSEL TO ALL OTHER INDEMNITEES, TAKEN AS A WHOLE, AND SOLELY IN THE CASE OF AN ACTUAL OR POTENTIAL CONFLICT OF INTEREST, ONE ADDITIONAL COUNSEL TO ALL AFFECTED INDEMNITEES, TAKEN AS A WHOLE, AND, IF REASONABLY NECESSARY, ONE LOCAL COUNSEL IN ANY RELEVANT MATERIAL JURISDICTION TO ALL SUCH OTHER INDEMNITEES, TAKEN AS A WHOLE AND, SOLELY IN THE CASE OF AN ACTUAL OR POTENTIAL CONFLICT OF INTEREST, ONE ADDITIONAL LOCAL COUNSEL TO ALL AFFECTED INDEMNITEES, TAKEN AS A WHOLE) INCURRED BY ANY INDEMNITEE OR ASSERTED AGAINST ANY INDEMNITEE BY A THIRD PARTY OR BY THE BORROWER OR ANY SUBSIDIARY ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF (i) THE EXECUTION OR DELIVERY OF THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, THE PERFORMANCE BY THE PARTIES HERETO OR THE PARTIES TO ANY OTHER LOAN DOCUMENT OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER OR THEREUNDER OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, (ii) THE FAILURE OF THE BORROWER OR ANY SUBSIDIARY TO COMPLY WITH THE TERMS OF ANY LOAN DOCUMENT, INCLUDING THIS AGREEMENT, OR WITH ANY GOVERNMENTAL REQUIREMENT, (iii) ANY LOAN OR LETTER OF CREDIT OR THE USE OF THE PROCEEDS THEREFROM, (iv) THE OPERATIONS OF THE BUSINESS OF THE BORROWER AND ITS SUBSIDIARIES BY THE BORROWER AND ITS SUBSIDIARIES, (v) ANY ENVIRONMENTAL LAW APPLICABLE TO THE BORROWER OR ANY SUBSIDIARY OR ANY OF THEIR PROPERTIES OR OPERATIONS, INCLUDING, THE PRESENCE, GENERATION, STORAGE, RELEASE, THREATENED RELEASE, USE, TRANSPORT, DISPOSAL, ARRANGEMENT OF DISPOSAL OR TREATMENT OF HAZARDOUS MATERIALS ON OR AT ANY OF THEIR PROPERTIES, (vi) THE BREACH OR NON-COMPLIANCE BY THE BORROWER OR ANY SUBSIDIARY WITH ANY ENVIRONMENTAL LAW APPLICABLE TO THE BORROWER OR ANY SUBSIDIARY, (vii) THE PAST OWNERSHIP BY THE BORROWER OR ANY SUBSIDIARY OF ANY OF THEIR PROPERTIES OR PAST ACTIVITY ON ANY OF THEIR PROPERTIES WHICH, THOUGH LAWFUL AND FULLY PERMISSIBLE AT THE TIME, COULD RESULT IN PRESENT LIABILITY, (viii) THE PRESENCE, USE, RELEASE,

STORAGE, TREATMENT, DISPOSAL, GENERATION, THREATENED RELEASE, TRANSPORT, ARRANGEMENT FOR TRANSPORT OR ARRANGEMENT FOR DISPOSAL OF HAZARDOUS MATERIALS ON OR AT ANY OF THE PROPERTIES OWNED OR OPERATED BY THE BORROWER OR ANY SUBSIDIARY OR ANY ACTUAL OR ALLEGED PRESENCE OR RELEASE OF HAZARDOUS MATERIALS ON OR FROM ANY PROPERTY OWNED OR OPERATED BY THE BORROWER OR ANY OF ITS SUBSIDIARIES, (ix) ANY ENVIRONMENTAL LIABILITY RELATED IN ANY WAY TO THE BORROWER OR ANY OF ITS SUBSIDIARIES, OR (x) ANY OTHER ENVIRONMENTAL, HEALTH OR SAFETY CONDITION IN CONNECTION WITH THE LOAN DOCUMENTS, OR (x) ANY ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY, WHETHER BROUGHT BY A THIRD PARTY OR BY THE BORROWER OR ANY SUBSIDIARY, AND REGARDLESS OF WHETHER ANY INDEMNITEE IS A PARTY THERETO, AND SUCH INDEMNITY SHALL EXTEND TO EACH INDEMNITEE NOTWITHSTANDING THE SOLE OR CONCURRENT NEGLIGENCE OF EVERY KIND OR CHARACTER WHATSOEVER, WHETHER ACTIVE OR PASSIVE, WHETHER AN AFFIRMATIVE ACT OR AN OMISSION, INCLUDING WITHOUT LIMITATION, ALL TYPES OF NEGLIGENT CONDUCT IDENTIFIED IN THE RESTATEMENT (SECOND) OF TORTS OF ONE OR MORE OF THE INDEMNITEES OR BY REASON OF STRICT LIABILITY IMPOSED WITHOUT FAULT ON ANY ONE OR MORE OF THE INDEMNITEES; *PROVIDED* THAT SUCH INDEMNITY SHALL NOT, AS TO ANY INDEMNITEE, BE AVAILABLE TO THE EXTENT THAT SUCH LOSSES, CLAIMS, DAMAGES, LIABILITIES OR RELATED EXPENSES (x) ARE DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NONAPPEALABLE JUDGMENT TO HAVE RESULTED FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE OR, OTHER THAN IN THE CASE OF THE ADMINISTRATIVE AGENT AND ITS RELATED PARTIES, A MATERIAL BREACH OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT BY SUCH INDEMNITEE, (y) OTHER THAN IN THE CASE OF THE ADMINISTRATIVE AGENT AND ITS RELATED PARTIES, RESULT FROM A CLAIM BROUGHT BY THE BORROWER OR ANY SUBSIDIARY AGAINST ANY INDEMNITEE FOR BREACH IN BAD FAITH OF SUCH INDEMNITEE'S OBLIGATIONS HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT, IF THE BORROWER OR SUCH SUBSIDIARY HAS OBTAINED A FINAL AND NONAPPEALABLE JUDGMENT IN ITS FAVOR ON SUCH CLAIM AS DETERMINED BY A COURT OF COMPETENT JURISDICTION, OR (z) RESULT FROM ANY DISPUTE SOLELY AMONG INDEMNITEES, OTHER THAN ANY CLAIMS AGAINST ANY INDEMNITEE IN ITS CAPACITY OR IN FULFILLING ITS ROLE AS ADMINISTRATIVE AGENT OR ANY SIMILAR ROLE UNDER THIS AGREEMENT, AND OTHER THAN ANY CLAIMS ARISING OUT OF ANY ACT OR OMISSION ON THE PART OF THE BORROWER OR ANY OF ITS SUBSIDIARIES OR AFFILIATES.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to pay indefeasibly any amount required under Sections 12.03(a) or (b) to be paid by it to Administrative Agent (or any sub-agent thereof), or any Related Party of any of the foregoing, each Lender severally agrees to pay to Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's *pro rata* share (determined as of the

time that the applicable unreimbursed expense or indemnity payment is sought (or, if such indemnity or reimbursement is sought after the date upon which the Loans shall have been paid in full and the Commitments have been terminated, in accordance with such Lenders' *pro rata* share as in effect immediately prior to such date)) of such unpaid amount; *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against Administrative Agent (or any such sub- agent) in its capacity as such, or against any Related Party of any of the foregoing acting for Administrative Agent (or any such sub-agent) in connection with such capacity. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any source against any amount due to the Administrative Agent under this paragraph (c). For purposes hereof, "*pro rata share*" means with respect to any Lender at any time, a percentage equal to a fraction the numerator of which is the aggregate outstanding principal amount of Loans and unused Commitments of such Lender at such time, and the denominator of which is the aggregate outstanding principal amount of the Loans and unused Commitments of all Lenders at such time.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no party shall assert, and hereby waives, any claim against any other party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof (other than to the extent any such damages are asserted pursuant to a third-party claim that would otherwise be required to be indemnified or reimbursed pursuant to any Loan Document). No Indemnitee referred to in Section 12.03(b) shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the Transactions.

(e) Payments. All amounts due under this Section 12.03 shall be payable promptly after written demand therefor.

Section 12.04 Assignments and Participations.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues a Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except (A) to an assignee in accordance with the provisions of Section 12.04(b), (B) by way of participation in accordance with the provisions of Section 12.04(d), or (C) by way of pledge or assignment of a security interest subject to the restrictions of Section 12.04(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate

of any Issuing Bank that issues a Letter of Credit), Participants (to the extent provided in Section 12.04(d)) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that any such assignments shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in Section 12.04(b)(i)(A), the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $1,000,000, unless (x) such assignment constitutes all of the Commitments or Loans of the assigning Lender or (y) each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all of the assigning Lender's rights and obligations under this Agreement and with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights on a *non-pro rata* basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 12.04(b)(i)(B) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment, (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund, or (3) the assignment is made (x) in connection with the primary syndication of the Initial Term Loan and Revolving Loan, (y) during the period commencing on the Closing Date and ending 60 days after the Closing Date, and (z) to any Person approved by the Borrower on or prior to the Closing Date; *provided* that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments to any Person that is not a Lender, an Affiliate of a Lender, or an Approved Fund with respect to a Lender;

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500 (which may be waived or reduced in the sole discretion of the Administrative Agent) and the assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required under Section 5.03.

(v) Assignments to Borrower; Open Auctions. No such assignment shall be made to the Borrower or any of the Borrower's respective Affiliates or Subsidiaries except in accordance with this Section 12.04(b)(v). Notwithstanding anything to the contrary in this Agreement, including Section 4.01(c) (which provisions shall not be applicable to this Section 12.04(b)(v)), any of Borrower or its Subsidiaries may purchase by way of assignment and become an Assignee with respect to Term Loans at any time and from time to time from Lenders in accordance with this Section 12.04 through open market purchases on a non-pro rata basis and/or through Dutch auctions open to all Term Lenders on a pro rata basis (in accordance with customary procedures) (each, a "**Permitted Loan Purchase**"); *provided* that, in respect of any Permitted Loan Purchase, (A) no Permitted Loan Purchase shall be made from the proceeds of any extensions of credit under the Revolving Facility, (B) upon consummation of any such Permitted Loan Purchase, the Term Loans purchased pursuant thereto shall be deemed to be automatically and immediately cancelled and extinguished, (C) in connection with any such Permitted Loan Purchase, any of Holdings or its Subsidiaries, including the Borrower and such Lender that is the assignor shall execute and deliver to the Administrative Agent a Permitted Loan Purchase Assignment and Acceptance (and for the avoidance of doubt, (x) shall make the representations and warranties set forth in the Permitted Loan Purchase Assignment and Acceptance and (y) shall not be required to execute and deliver an Assignment and Acceptance but shall otherwise comply with the conditions to Assignment and Acceptances under this Section 9.04 and (D) no Default or Event of Default would exist immediately after giving effect on a Pro Forma Basis to such Permitted Loan Purchase. Each Permitted Loan Purchase shall, for purposes of this Agreement be deemed to be an automatic and immediate cancellation and extinguishment of such Term Loans and the Borrower shall, upon consummation of any Permitted Loan Purchase, notify the Administrative Agent that the Register be updated to record such event as if it were a prepayment of such Loans.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

(vii) No Assignments to Defaulting Lenders. No such assignment shall be made to a Defaulting Lender.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 12.04(c), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under

this Agreement, and the assigning Lender thereunder shall. to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Section 5.01, Section 5.02, Section 5.03 and Section 12.03 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 12.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 12.04(d).

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Upon the Administrative Agent's receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire and applicable tax forms (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 12.04(b) and any written consent to such assignment required by Section 12.04(b), the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 12.04(c). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the Issuing Banks and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations.

(i) Any Lender may at any time, without the consent of or notice to the Borrower, any Issuing Bank or the Administrative Agent, sell participations to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, each Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

(ii) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the

proviso to Section 12.02 that affects such Participant. In addition such agreement must provide that the Participant be bound by the provisions of Section 12.03. Subject to Section 12.04(e), the Borrower agrees that each Participant shall be entitled to the benefits of Section 5.01, Section 5.02 and Section 5.03 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.04(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.08 as though it were a Lender, *provided* that such Participant agrees to be subject to Section 4.01(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 5.01 or Section 5.03 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 5.03 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 5.03(f) as though it were a Lender

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including, without limitation, any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender, and Section 12.04(e) shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Restrictions if Registration Required. Notwithstanding any other provisions of this Section 12.04, no transfer or assignment of the interests or obligations of any Lender or any grant of participations therein shall be permitted if such transfer, assignment or grant would require the Borrower and the Guarantors to file a registration statement with the SEC or to qualify the Loans under the "Blue Sky" laws of any state.

Section 12.05 Survival; Revival; Reinstatement.

(a) All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid. The provisions of Section 5.01, Section 5.02, Section 5.03 and Section 12.03 and Article XI shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans or the termination of this Agreement, any other Loan Document or any provision hereof or thereof.

(b) To the extent that any payments on the Secured Obligations or proceeds of any Collateral are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or other Person under any bankruptcy law, common law or equitable cause, then to such extent, the Secured Obligations so satisfied shall be revived and continue as if such payment or proceeds had not been received and the Administrative Agent's and the Lenders' Liens, security interests, rights, powers and remedies under this Agreement and each Loan Document shall continue in full force and effect. In such event, each Loan Document shall be automatically reinstated and the Borrower shall take such action as may be reasonably requested by the Administrative Agent and the Lenders to effect such reinstatement.

Section 12.06 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

(b) Integration. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES HERETO AND THERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(c) Effectiveness. Except as provided in Section 6.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an

executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

(d) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 12.07 Severability. Any provision of this Agreement or any other Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof or thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 12.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (of whatsoever kind, including, without limitations obligations under Hedging Agreements, and in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower or any Subsidiary against any and all of the obligations of the Borrower or any Subsidiary now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Subsidiary may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such Indebtedness. The rights of each Lender and its Affiliates under this Section 12.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender or its Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

Section 12.09 GOVERNING LAW; JURISDICTION; CONSENT TO SERVICE OF PROCESS.

(a) THIS AGREEMENT AND, EXCEPT AS OTHERWISE SET FORTH THEREIN, THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK EXCEPT TO THE EXTENT THAT UNITED STATES FEDERAL LAW PERMITS ANY LENDER TO CONTRACT FOR, CHARGE, RECEIVE, RESERVE OR TAKE INTEREST AT THE RATE ALLOWED BY THE LAWS OF THE STATE WHERE SUCH LENDER IS LOCATED.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THE LOAN DOCUMENTS SHALL, EXCEPT AS OTHERWISE SET FORTH THEREIN, BE BROUGHT EXCLUSIVELY IN THE COURTS OF THE COUNTY AND STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HEREBY ACCEPTS FOR ITSELF AND (TO THE EXTENT PERMITTED BY LAW) IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS.

(c) EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO IT AT THE ADDRESS SPECIFIED IN SECTION 12.01 OR SUCH OTHER ADDRESS AS IS SPECIFIED PURSUANT TO SECTION 12.01 (OR ITS ASSIGNMENT AND ASSUMPTION), SUCH SERVICE TO BECOME EFFECTIVE THIRTY (30) DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL AFFECT THE RIGHT OF A PARTY OR ANY HOLDER OF A NOTE TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANOTHER PARTY IN ANY OTHER JURISDICTION.

(d) EACH PARTY HEREBY (i) IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) AND FOR ANY COUNTERCLAIM THEREIN; (ii) IRREVOCABLY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY SUCH LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES; (iii) CERTIFIES THAT NO OTHER PARTY HERETO NOR ANY REPRESENTATIVE, AGENT OR ATTORNEY FOR ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, OR IMPLIED, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (iv) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT, THE LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION 12.09.

Section 12.10 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 12.11 Confidentiality. Each of the Administrative Agent, each Issuing Bank and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors (including accountants and legal counsel) and other representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement or any other Loan Document, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 12.11, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Hedging Agreement relating to the Borrower and its obligations, (g) with the consent of the Borrower, (h) to any other party to any Loan Document, (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 12.11 or (ii) becomes available to the Administrative Agent, each Issuing Bank, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than the Borrower. For purposes of this Section 12.11, "**Information**" means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, each Issuing Bank or any Lender on a non-confidential basis prior to disclosure by the Borrower or a Subsidiary; provided that, in the case of information received from the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 12.11 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 12.12 Interest Rate Limitation. It is the intention of the parties hereto that each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the Transactions contemplated hereby would be usurious as to any Lender under laws applicable to it (including the laws of the United States of America and the State of Texas or any other jurisdiction whose laws may be mandatorily applicable to such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in any of the Loan Documents or any agreement entered into in connection with or as security for the Secured Obligations, it is agreed as follows: (a) the aggregate of all consideration which constitutes interest under law applicable to any Lender that is contracted for, taken, reserved, charged or received by such Lender under any of the Loan Documents or agreements or otherwise in connection with the Loans shall under no circumstances exceed the maximum amount allowed

by such applicable law, and any excess shall be canceled automatically and if theretofore paid shall be credited by such Lender on the principal amount of the Secured Obligations (or, to the extent that the principal amount of the Secured Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower); and (b) in the event that the maturity of the Loans is accelerated by reason of an election of the holder thereof resulting from any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall be canceled automatically by such Lender as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Lender on the principal amount of the Secured Obligations (or, to the extent that the principal amount of the Secured Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower). All sums paid or agreed to be paid to any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such Lender, be amortized, prorated, allocated and spread throughout the stated term of the Loans until payment in full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (i) the amount of interest payable to any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Lender pursuant to this Section 12.12 and (ii) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Lender would be less than the amount of interest payable to such Lender computed at the Highest Lawful Rate applicable to such Lender, then the amount of interest payable to such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Lender until the total amount of interest payable to such Lender shall equal the total amount of interest which would have been payable to such Lender if the total amount of interest had been computed without giving effect to this Section 12.12.

Section 12.13 EXCULPATION PROVISIONS. EACH OF THE PARTIES HERETO SPECIFICALLY AGREES THAT IT HAS A DUTY TO READ THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND AGREES THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; THAT IT HAS IN FACT READ THIS AGREEMENT AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT; THAT IT HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF ITS CHOICE THROUGHOUT THE NEGOTIATIONS PRECEDING ITS EXECUTION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND HAS RECEIVED THE ADVICE OF ITS ATTORNEY IN ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND THAT IT RECOGNIZES THAT CERTAIN OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS RESULT IN ONE PARTY ASSUMING THE LIABILITY INHERENT IN SOME ASPECTS OF THE TRANSACTION AND RELIEVING THE OTHER PARTY OF ITS RESPONSIBILITY FOR SUCH LIABILITY. EACH PARTY HERETO AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEABILITY OF ANY EXCULPATORY PROVISION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS ON THE BASIS THAT THE PARTY HAD NO

NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT THE PROVISION IS NOT "CONSPICUOUS."

Section 12.14 Collateral Matters; Secured Hedging Agreements; Bank Products. The benefit of the Security Instruments and of the provisions of this Agreement relating to any Collateral securing the Secured Obligations shall also extend to and be available to the Secured Hedging Counterparties with respect to any Secured Hedging Agreement (including any Secured Hedging Agreement in existence prior to the date hereof, but excluding any additional transactions or confirmations entered into (a) after such Secured Hedging Counterparty ceases to be a Lender or an Affiliate of a Lender or (b) after assignment by a Secured Hedging Counterparty to another Person that is not a Lender or an Affiliate of a Lender) and Bank Products Providers with respect to any obligations in respect of Bank Products. No Lender or any Affiliate of a Lender shall have any voting or consent rights under any Loan Document as a result of the existence of obligations owed to it under any such Secured Hedging Agreements or in respect of Bank Products.

Section 12.15 No Third Party Beneficiaries. This Agreement, the other Loan Documents, and the agreement of the Lenders to make Loans and each Issuing Bank to issue, amend, renew or extend Letters of Credit hereunder are solely for the benefit of the Borrower, and no other Person (including, without limitation, any Subsidiary of the Borrower, any obligor, contractor, subcontractor, supplier or materialman) shall have any rights, claims, remedies or privileges hereunder or under any other Loan Document against the Administrative Agent, each Issuing Bank or any Lender for any reason whatsoever. There are no third party beneficiaries.

Section 12.16 USA Patriot Act Notice. The Administrative Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**USA Patriot Act**"), it is required to obtain, verify and record information that identifies the Borrower and its Subsidiaries, which information includes the name and address of the Borrower and its Subsidiaries and other information that will allow such Administrative Agent or Lender to identify the Borrower and its Subsidiaries in accordance with the USA Patriot Act.

Section 12.17 No Advisory or Fiduciary Responsibility.

(a) In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that: (a) (i) no fiduciary, advisory or agency relationship between the Borrower and its Subsidiaries and the Administrative Agent, any Initial Exit Lender or any Lender is intended to be or has been created in respect of the transactions contemplated hereby or by the other Loan Documents, irrespective of whether the Administrative Agent or any Lender has advised or is advising the Borrower or any Subsidiary on other matters; (ii) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Ad Hoc Group, the Initial Exit Lenders and the Lenders are arm's-length commercial transactions between the Borrower and its Subsidiaries, on the one hand, and the Administrative Agent, the Ad Hoc Group, the Initial Exit Lenders and the Lenders, on the other hand; (iii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed

appropriate; and (iv) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; and (b) (i) the Administrative Agent, the Ad Hoc Group, the Initial Exit Lenders and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Subsidiaries, or any other Person; (ii) neither the Administrative Agent, the Ad Hoc Group, the Initial Exit Lenders nor the Lenders has any obligation to the Borrower or any of its Subsidiaries with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Ad Hoc Group, the Initial Exit Lenders and the Lenders and their respective Affiliates may be engaged, for their own accounts or the accounts of customers, in a broad range of transactions that involve interests that differ from those of the Borrower and its Subsidiaries, and neither the Administrative Agent, the Ad Hoc Group, the Initial Exit Lenders nor the Lenders has any obligation to disclose any of such interests to the Borrower or its Subsidiaries. To the fullest extent permitted by Law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent, the Ad Hoc Group, the Initial Exit Lenders and the Lenders and their respective Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

(b) In connection with all aspects of each transaction contemplated hereby, each Lender acknowledges and agrees that: (a) (i) no fiduciary, advisory or agency relationship between the such Lender and the Initial Exit Lenders or the Ad Hoc Group is intended to be or has been created in respect of the transactions contemplated hereby or by the other Loan Documents; (ii) the arranging and other services regarding this Agreement provided by the Ad Hoc Group and the Initial Exit Lenders are arm's-length commercial transactions between among the Lenders (including the Initial Exit Lenders), (iii) such Lender has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed appropriate; and (iv) such Lender is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; and (b) (i) each Initial Exit Lender and the Ad Hoc Group is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for such Lender; (ii) neither the Ad Hoc Group nor the Initial Exit Lenders has any obligation to the other Lenders with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Ad Hoc Group and the Initial Exit Lenders and their respective Affiliates may be engaged, for their own accounts or the accounts of customers, in a broad range of transactions that involve interests that differ from those of the other Lenders, and neither the Ad Hoc Group nor any Initial Exit Lender has any obligation to disclose any of such interests to the other Lenders. To the fullest extent permitted by Law, each Lender hereby waives and releases any claims that it may have against the Ad Hoc Group and the Initial Exit Lenders and their respective Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 12.18 [Reserved.]

Section 12.19 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[SIGNATURES BEGIN NEXT PAGE]