Stephen M. Pezanosky
State Bar No. 15881850
Matthew T. Ferris
State Bar No. 24045870
David L. Staab
State Bar No. 24093194
Alexandra Kirincic
State Bar No. 24116621
HAYNES AND BOONE, LLP
301 Commerce Street, Suite 2600
Fort Worth, TX 76102
Telephone: 817.347.6600
Facsimile: 817.347.6650
Email: stephen.pezanosky@haynesboone.com
Email: matt.ferris@haynesboone.com
Email: david.staab@haynesboone.com
Email: alex.kirincic@haynesboone.com

ATTORNEYS FOR DEBTORS

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	§	Chapter 11
	§	
Vista Proppants and Logistics, LLC, et al.,[1]	§	Case No. 20-42002-ELM-11
	§	
Debtors.	§	Jointly Administered

NOTICE OF FILING OF AMENDED PLAN SUPPLEMENTS

PLEASE TAKE NOTICE that pursuant to the terms of *the Third Amended Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 518] (the "Plan"),[2] the following documents are attached hereto:

- Exhibit 1 – Updated Governance Documents;
- Exhibit 2 – Identities of the officers of the Reorganized Debtors;
- Exhibit 3 – Identities and affiliations of the members of the New Parent Board;

[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Vista Proppants and Logistics, LLC (7817) ("Vista HoldCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.

[2] Capitalized terms not defined herein shall have the meaning ascribed to them in the Plan.

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- Exhibit 4 – Exit Facility Documents;
- Exhibit 5 – Schedule of Assumed Contracts and Leases;[3]
- Exhibit 6 – Schedule of Retained Causes of Action;[4]
- Exhibit 7 – Schedule of Litigation Trust Causes of Action;[5]
- Exhibit 8 – Litigation Trust Agreement;
- Exhibit 9 – Litigation Trust Loan Documents; and
- Exhibit 10 – Identity of Litigation Trustee[6]

[3] The Schedule of Assumed Contracts and Leases attached hereto as **Exhibit 5** amends and supersedes the Schedule of Assumed Contracts and Leases that was filed on September 19, 2020, as Exhibit 5 to the *Notice of Filing of Plan Supplements* [Dkt. 549] (the "Original Plan Supplement").

[4] The Schedule of Retained Causes of Action attached hereto as **Exhibit 6** is substantially identical to the version filed with the Original Plan Supplement. On September 28, 2020, the Court entered *Order Granting Debtors' Expedited Motion Pursuant to Bankruptcy Rule 9019 to Compromise Controversy with Axis Insurance Company* [Dkt. 601], which approved the Release and Settlement Agreement between Vista Proppants and Logistics, LLC and Axis Insurance Company. As a result, the Debtors deleted the language in the Schedule of Retained Causes of Action indicating that such agreement remained subject to Court approval. No other changes were made to the Schedule of Retained Causes of Action.

[5] The Schedule of Litigation Trust Causes of Action attached hereto as **Exhibit 7** is identical to the version filed with the Original Plan Supplement.

[6] **Exhibit 10** attached hereto is identical to the version filed with the Original Plan Supplement.

DATED this 1st day of October, 2020.

HAYNES AND BOONE, LLP

By: */s/ David L. Staab*

Stephen M. Pezanosky
State Bar No. 15881850
Matthew T. Ferris
State Bar No. 24045870
David L. Staab
State Bar No. 24093194
Alexandra Kirincic
State Bar No. 24116621
301 Commerce Street, Suite 2600
Fort Worth, TX 76102
Telephone: 817.347.6600
Facsimile: 817.347.6650
Email: stephen.pezanosky@haynesboone.com
Email: matt.ferris@haynesboone.com
Email: david.staab@haynesboone.com
Email: alex.kirincic@haynesboone.com

ATTORNEYS FOR DEBTORS

Exhibit 1

Updated Governance Documents

AMENDED & RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

OF

V SANDCO, LLC

Dated as of [●], 2020

THE INTERESTS REPRESENTED BY THIS AMENDED & 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 INTERESTS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER SUBSTANTIAL RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

THE INTERESTS REPRESENTED BY THIS AMENDED & RESTATED LIMITED LIABILITY COMPANY AGREEMENT ARE SUBJECT TO THE TRANSFER RESTRICTIONS SPECIFIED IN THIS AGREEMENT.

AMENDED & RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
V SANDCO, LLC

TABLE OF CONTENTS

Page

ARTICLE I FORMATION OF THE COMPANY 2
Section 1.1. Formation of the Company 2
Section 1.2. Name 3
Section 1.3. Business of the Company 3
Section 1.4. Powers of the Company 3
Section 1.5. Foreign Qualification 4
Section 1.6. Registered Office; Registered Agent; Principal Office; Other Offices 4
Section 1.7. Term 5
Section 1.8. Records and Accounting 5
Section 1.9. Tax Characterization 5
ARTICLE II DEFINITIONS 5
Section 2.1. Definitions 5
Section 2.2. Rules of Interpretation 11
ARTICLE III CAPITAL CONTRIBUTIONS 12
Section 3.1. Units; Issuance of Additional Units 12
Section 3.2. Member Register 13
Section 3.3. Interest on Capital Contributions 13
Section 3.4. Withdrawal and Return of Capital Contributions 13
Section 3.5. Form of Capital Contribution 14
Section 3.6. Certificates 14
Section 3.7. Title to Company Assets 14
Section 3.8. No Right of Partition 14
Section 3.9. Loans from Members 14
ARTICLE IV DISTRIBUTIONS 14
Section 4.1. Distributions 14
Section 4.2. Limitations on Distributions 14
Section 4.3. Reserves 14
Section 4.4. Withholding 15

ARTICLE V BOOKS OF ACCOUNT 15
Section 5.1. Books and Records 15
Section 5.2. Reports 15
ARTICLE VI POWERS, RIGHTS AND DUTIES OF THE MEMBERS 16
Section 6.1. Limitations 16
Section 6.2. Liability 16
Section 6.3. Fiduciary Duties; Investment Opportunities and Conflicts of Interest 16
Section 6.4. Equity Preemptive Rights 17
Section 6.5. Debt Preemptive Rights 18
Section 6.6. Certain Consent Rights 18
ARTICLE VII POWERS, RIGHTS AND DUTIES OF THE BOARD OF DIRECTORS 19
Section 7.1. Management by the Board of Directors 19
Section 7.2. Composition and Election of the Board of Directors 20
Section 7.3. Board Meetings; Actions by Written Consent; Voting 21
Section 7.4. Committees; Delegation of Authority and Duties 23
Section 7.5. Officers 23
Section 7.6. Standard of Board and Director Actions 24
Section 7.7. Indemnification 25
Section 7.8. Independent Director 26
ARTICLE VIII TRANSFERS OF INTEREST BY MEMBERS 27
Section 8.1. General 27
Section 8.2. Sale of the Company 30
Section 8.3. Tag-Along Rights 33
Section 8.4. Right of First Offer 35
Section 8.5. Effect of Transfer 36
Section 8.6. Other Transfer Requirements 36
Section 8.7. Transfer Fees and Expenses 37
Section 8.8. Void Transfers 37
Section 8.9. No Circumvention of Unit Transfer Restrictions 37
Section 8.10. Holdback Agreement 37
Section 8.11. Reorganization of the Company; Public Offering 38
Section 8.12. Piggyback Registration Rights 39
ARTICLE IX RESIGNATION OF MEMBERS; TERMINATION OF COMPANY; LIQUIDATION AND DISTRIBUTION OF ASSETS 40

Section 9.1. Resignation of Members 40
Section 9.2. Dissolution of Company 41
Section 9.3. Distribution in Liquidation 41
Section 9.4. Rights of Members 42
Section 9.5. Termination 42
ARTICLE X NOTICES; VOTING; INFORMATION RIGHTS 42
Section 10.1. Notices 42
Section 10.2. Voting 44
ARTICLE XI AMENDMENT OF AGREEMENT 44
Section 11.1. Amendments by the Members 44
Section 11.2. Amendments by the Board 44
Section 11.3. Amendment of Certificate 45
ARTICLE XII MISCELLANEOUS 45
Section 12.1. Confidentiality 45
Section 12.2. Each Company Membership Interest is a Security 46
Section 12.3. Offset 46
Section 12.4. Remedies 46
Section 12.5. Entire Agreement 47
Section 12.6. Waiver 47
Section 12.7. Governing Law; Jurisdiction; Venue; Service of Process 47
Section 12.8. Severability 47
Section 12.9. Effect 48
Section 12.10. Captions 48
Section 12.11. Further Action 48
Section 12.12. Counterparts 48
Section 12.13. Waiver of Partition 48
Section 12.14. Specific Performance 48
Section 12.15. Survival 48
Section 12.16. Non-Recourse 48
Section 12.17. Certain Acknowledgments 49
Section 12.18. Termination 49

Schedule A Member Register
Schedule B Officers
Schedule C Competitive Businesses

Exhibit A Form of Joinder

AMENDED & RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

V SANDCO, LLC

This AMENDED & RESTATED LIMITED LIABILITY COMPANY AGREEMENT of V SandCo, LLC is dated as of [●], 2020, by and among V SandCo, LLC, a Delaware limited liability company (the "***Company***"), and the Members listed on the signature pages hereto. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Section 2.1.

RECITALS

WHEREAS, in connection with the Restructuring Transactions (as defined below), the Company was formed as V SandCo, LLC, a limited liability company under the Act by the filing of the Certificate with the Office of the Secretary of State of Delaware on [●], 2020;

WHEREAS, the Company entered into that certain limited liability company agreement of the Company, dated as of [●], 2020 (the "***Original Limited Liability Company Agreement***");

WHEREAS, the Members have engaged in good faith and arm's-length negotiations regarding an in-court restructuring of Vista Proppants and Logistics, LLC, a Delaware limited liability company ("***VPL***"), and each of its direct and indirect subsidiaries, pursuant to the terms of that certain Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, *et al.*, pursuant to Chapter 11 of the Bankruptcy Code, dated as of [●] (as amended and confirmed, the "***Plan***" and the transactions contemplated therein, the "***Restructuring Transactions***");

WHEREAS, VPL and VPROP Operating, LLC, a Delaware limited liability company ("***VPROP Operating***"), entered into the Amended and Restated Senior Secured Credit Agreement dated as of November 9, 2017 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the "***Prepetition Term Loan Agreement***"), by and among VPL, as the parent, VPROP Operating, as the borrower, each of the Members as lenders (in such capacity, the "***Prepetition Term Loan Lenders***"), and Ares Capital Corporation, as administrative agent for the Prepetition Term Loan Lenders, pursuant to which, among other things, the Prepetition Term Loan Lenders extended Loans (as defined in the Prepetition Term Loan Agreement) to VPROP Operating (such Loans, the "***Prepetition Term Loans***"; and all "Indebtedness" under and as defined in the Prepetition Term Loan Agreement, the "***Prepetition Term Loan Obligations***");

WHEREAS, in accordance with the Plan and in connection with the Restructuring Transactions, (a) each Member as of the date of this Agreement contributed to the Company, pro rata, all of its rights, title and interests as Prepetition Term Loan Lenders in and to the Prepetition

Term Loans in an aggregate principal amount equal to [**$318,000,000**][1] (the "***Contributed Prepetition Debt***") in exchange for Class A Units (such contribution, the "***Debtholder Contribution***"), and (b) the Company accepted such Debtholder Contribution and, in exchange therefor, admitted each Member as of the date of this Agreement as a member of the Company and issued to each Member as of the date of this Agreement the number of Class A Units set forth opposite the name of such Member as of the date of this Agreement on Schedule A;

WHEREAS, in connection with the Restructuring Transactions, (a) VPL transferred 100% of the equity interests of (representing all of its ownership interest in) VPROP Operating to the Company and (b) in exchange for such transfer, the Company extinguished the Contributed Prepetition Debt;

WHEREAS, in connection with the Restructuring Transactions and as of the Plan Effective Date, the Company and VPROP Operating will enter into a term loan credit agreement (the "***Exit Facility***") by and among the Company, VPROP Operating, as the borrower, the Members, as lenders (in such capacity and together with any other lenders from time to time party thereto, the "***Exit Facility Lenders***"), and Ares Capital Corporation, as administrative agent and collateral agent for the Exit Facility Lenders. pursuant to which, among other things, the Exit Facility Lenders will agree to make loans, financial accommodations and other extensions of credit (including, subject to the terms and conditions therein, incremental loans) available to VPROP Operating from time to time in accordance with the terms thereof (the "***Exit Facility Loans***");

WHEREAS, in connection with and immediately following the Restructuring Transactions and pursuant to the terms of the Plan and the Confirmation Order the ("***Confirmation Order***"), the Members desire to amend and restate the Original Limited Liability Company Agreement of the Company on the terms and conditions herein set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows:

ARTICLE I
FORMATION OF THE COMPANY

Section 1.1. Formation of the Company. The Company was formed as a limited liability company under the Act by the filing of the Certificate with the Office of the Secretary of State of Delaware on [●], 2020. Prior to the execution of this Agreement, certain authorized Persons executed, delivered and filed certain documents (including the certificate of formation, Forms W-9 and other agreements in connection with the formation of the Company) on behalf of the Company. All actions taken by such authorized Persons in connection with the formation of the Company are hereby ratified, approved and confirmed. The Company shall accomplish all filing, recording, publishing and other acts necessary or appropriate for compliance with all requirements for operation of the Company as a limited liability company under this Agreement

[1] [***Note to Draft***: To be revised prior to finalizing documents with the final number.]

and the Act and under all other laws of the State of Delaware and such other jurisdictions in which the Company determines that it may conduct business.

Section 1.2. **Name**. The name of the Company is "V SandCo, LLC", as such name may be modified from time to time by the Board of Directors as it may deem advisable.

Section 1.3. **Business of the Company**. The purposes of the Company shall be to carry on any other lawful purposes or activities that are not prohibited by the Act. Subject to the Act and this Agreement, the Board of Directors on behalf of the Company shall have and exercise all powers, necessary, convenient or incidental to accomplish such purpose.

Section 1.4. **Powers of the Company**. Subject to the provisions of this Agreement and the Act, without limiting the generality of Section 1.3, the Company and the members of the Board in their capacity as managers of the Company shall (i) have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act and their managers that are consistent with such purpose and (ii) have the power and authority to take any and all actions necessary, appropriate, proper, advisable, convenient or incidental to or for the furtherance of the purposes set forth in Section 1.3, including the power:

(a) to conduct its business, carry on its operations and have and exercise the powers granted to a limited liability company by the Act in any state, territory, district or possession of the United States, or in any foreign country that may be necessary, convenient or incidental to the accomplishment of the purpose of the Company;

(b) to acquire by purchase, lease, contribution of property or otherwise, own, hold, operate, maintain, finance, refinance, improve, lease, sell, convey, mortgage, transfer, demolish or dispose of any real or personal property that may be necessary, convenient or incidental to the accomplishment of the purpose of the Company;

(c) to enter into, perform and carry out contracts of any kind, including contracts with any Member or any Affiliate thereof (subject to Section 6.6(a)), or any agent of the Company necessary to, in connection with, convenient to or incidental to the accomplishment of the purpose of the Company;

(d) to purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in or obligations of domestic or foreign corporations, associations, general or limited partnerships (including the power to be admitted as a partner thereof and to exercise the rights and perform the duties created thereby), trusts, limited liability companies (including the power to be admitted as a member or holder of units or appointed as a manager thereof and to exercise the rights and perform the duties created thereby) or individuals, or direct or indirect obligations of the United States or of any government, state, territory, governmental district or municipality or of any instrumentality of any of them;

(e) to lend money for any proper purpose, to invest and reinvest its funds and to take and hold real and personal property for the payment of funds so loaned or invested;

(f) to sue and be sued, complain and defend, and participate in administrative or other proceedings in its name;

(g) to appoint employees and agents of the Company and define their duties and fix their compensation;

(h) to indemnify any Person in accordance with the Act and to obtain any and all types of insurance;

(i) to cease its activities and cancel its Certificate;

(j) to negotiate, enter into, renegotiate, extend, renew, terminate, modify, amend, waive, execute, acknowledge or take any other action in respect of any lease, contract or security agreement in respect of any assets of the Company;

(k) to borrow money and issue evidences of indebtedness and guaranty indebtedness (whether of the Company or any of the Subsidiaries), and to secure the same by a mortgage, pledge or other lien on the assets of the Company;

(l) to pay, collect, compromise, litigate, arbitrate or otherwise adjust or settle any and all other claims or demands of or against the Company or to hold such proceeds against the payment of contingent liabilities; and

(m) to make, execute, acknowledge and file any and all documents or instruments necessary, convenient or incidental to the accomplishment of the purpose of the Company.

Section 1.5. Foreign Qualification. Prior to the Company conducting business in any jurisdiction other than Delaware, the Company shall comply, to the extent procedures are available and those matters are reasonably within the control of the Company, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of a majority of the Board of Directors or any Officer, each Member shall execute, acknowledge and deliver all certificates and other instruments conforming with this Agreement that are necessary or appropriate to qualify, continue and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

Section 1.6. 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 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 such other Person or Persons as the Board may designate from time to time in the manner provided by law. The offices of the Company shall be at such place or places as the Board may designate from time to time, which need not be in the State of Delaware.

Section 1.7. **Term**. The term of the Company commenced on the date of filing of the Certificate, and shall be perpetual unless the Company is earlier dissolved and terminated in accordance with the provisions of this Agreement.

Section 1.8. **Records and Accounting**. All matters concerning (a) the determination of the relative amount of distributions among the Members pursuant to Article IV and Article IX and (b) accounting procedures and determinations, and other determinations not specifically and expressly provided for by the terms of this Agreement, shall be determined solely by the Board.

Section 1.9. **Tax Characterization**. The Company shall elect to be taxed as a corporation for U.S. federal income tax purposes and no Member shall take any action contrary to such treatment unless and until otherwise determined by the Board of Directors.

ARTICLE II
DEFINITIONS

Section 2.1. **Definitions**. The following terms used in this Agreement shall have the following meanings.

"***1940 Act***" – the Investment Company Act of 1940, as in effect on the date hereof and as it may be amended hereafter from time to time.

"***Act***" – the Delaware Limited Liability Company Act, 6 Del. Code §18-101 et seq., as in effect on the date hereof and as it may be amended hereafter from time to time.

"***Additional Member***" – as set forth in Section 3.1(c).

"***Affiliate***" – with respect to another Person means any Person directly or indirectly Controlling, Controlled by or under common Control with such other Person. For purposes of the foregoing, "***Control***" means the possession, directly or indirectly, of the power to direct the management or policies of a Person, whether through ownership or voting of securities, by contract or otherwise. Notwithstanding the forgoing, in no event shall any Member or any of its Affiliates be deemed to be an Affiliate of any other Member or any of its Affiliates (other than the Company) solely by reason of such Member being a Member of the Company.

"***Affiliate Indebtedness***" – any debt for borrowed money issued by any Class A Member (or its Affiliates) to the Company or its Subsidiaries, other than the Exit Facility Loans contemplated under the Exit Facility as in effect on the Effective Date (as defined in the Exit Facility); *provided*, that, for the avoidance of doubt, "Affiliate Indebtedness" shall not include the Incremental Term Loans (as defined in the Exit Facility).

"***AG Director***" – as set forth in Section 7.2(a)(iii).

"***AG Member***" – AG Energy Funding, LLC.

"***Agreement***" – this Amended and Restated Limited Liability Company Agreement, as amended, modified or supplemented from time to time.

"***Anti-Corruption Laws***" – all laws and regulations of any jurisdiction concerning or relating to bribery or corruption, including, but not limited to, the U.S. Foreign Corrupt Practices Act of 1977, as amended.

"***Anti-Money Laundering Laws***" – any laws and regulations concerning or relating to money laundering, drug trafficking, terrorism financing or other money laundering predicate crimes, including, but not limited to, the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act) and the USA PATRIOT Act of 2001.

"***Approved Sale***" – as set forth in Section 8.2(a).

"***Approved Sale Notice***" – as set forth in Section 8.2(f).

"***Approved Sale Outside Date***" – as set forth in Section 8.2(f).

"***Ares***" – Ares Capital Corporation, together with its affiliates and managed funds.

"***Ares Directors***" – as set forth in Section 7.2(a)(i).

"***Ares Members***" – means AC American Fixed Income IV, L.P., Ares Capital Corporation, Ares Capital CP Funding, LLC, Ares Centre Street Partnership LP, Federal Insurance Company (DL), Great American Insurance Company, Great American Life Insurance Company, Premia LVI Ltd., SA Real Assets 20 Limited and SC ACM Private Debt Fund L.P. and their respective successors and assigns, including any Permitted Transferees.

"***Assignees***" – as set forth in Section 8.1(d)(vii).

"***Available Cash***" – at the time of any distribution, the excess of (a) all cash then held by the Company over (b) the amount of reserves established by the Company in accordance with Section 4.3 as determined by the Board of Directors.

"***Board of Directors***" or "***Board***" – the board of directors of the Company established pursuant to Section 7.1.

"***Business Day***" – any day other than a Saturday, Sunday or a day on which commercial banks are authorized or required to close in New York City, New York.

"***Capital Contribution***" – a contribution to the capital of the Company.

"***Certificate***" – the Certificate of Formation of the Company, as amended, modified or supplemented from time to time.

"***Class A Member***" – any holder of Class A Units, in such Member's capacity as such.

"***Class A Observer***" – as set forth in Section 7.2(d)(ii).

"***Class A Units***" – as set forth in Section 3.1(a).

"***Code***" – the Internal Revenue Code of 1986.

"***Commission***" – the Securities and Exchange Commission or any other federal agency then administering the Securities Act and other federal securities laws.

"***Company***" – as set forth in the Preamble.

"***Confirmation Order***" - as set forth in the Recitals.

"***Contributed Prepetition Debt***" – as set forth in the Recitals.

"***Control***" – as set forth in the definition of "Affiliate" in this Section 2.1.

"***Debtholder Contribution***" – as set forth in the Recitals.

"***Director***" – a current member of the Board, who, for purposes of the Act, will be deemed a "manager" (as defined in the Act) but will have the rights and obligations set forth in this Agreement.

"***ERISA***" – the Employee Retirement Income Security Act of 1974 and the regulations promulgated thereunder.

"***Exchange Act***" – the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"***Executive Director Observer***" – as set forth in Section 7.3(d)(i).

"***Exit Facility***" – as set forth in the Recitals.

"***Exit Facility Lenders***" – as set forth in the Recitals.

"***Exit Facility Loans***" – as set forth in the Recitals.

"***Fully Diluted Basis***" – as of any time of determination, the total number of any and all issued and outstanding Units and any and all Units issuable upon the exercise, exchange or conversion of any security, form of indebtedness, limited liability company interest or obligation that is by its terms, directly or indirectly, convertible into or exchangeable or exercisable for Units, and any option, warrant or other right to subscribe for, purchase or acquire Units or other equivalent securities (disregarding any restrictions or limitations on the exercise of such rights) as of such date, whether or not any of the foregoing is at the time of determination exercisable, exchangeable or convertible.

"***Governmental Authority***" – any (a) multinational, national, federal, provincial, territorial, state, regional, municipal, local or other government or any governmental or public department, court, tribunal, arbitral body, statutory body, commission, board, bureau or agency, (b) self-regulatory organization, regulatory authority, administrative tribunal or authority, (c) subdivision, agent, commission, board or authority of any of the foregoing or (d) quasi-

governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing.

"***HoldCo Equity***" – as set forth in Section 8.9(b).

"***Indemnified Parties***" – as set forth in Section 7.7(a).

"***Independent Director***" – as set forth in Section 7.8.

"***Initiating Tag Holder***" – as set forth in Section 8.3(a).

"***Interest***" – when used in reference to an interest in the Company, means the ownership interest of a Member in the Company at any particular time, including its interest in the capital, profits, losses and distributions of the Company.

"***Law***" – all laws, regulations, statutes, codes, rules permits, licenses, certifications, decrees or standards imposed by any Governmental Authority, and any order, injunction, judgment, decree, ruling, writ, assessment, award, subpoena, verdict, settlement or finding from any Governmental Authority.

"***Liens***" – any mortgage, lien, security interest, pledge, reservation, equitable interest, charge, easement, lease, sublease, conditional sale or other title retention agreement, right of first refusal, hypothecation, covenant, servitude, option, warrant, claim, community property interest, restriction (including any restriction on use, voting, transfer, alienation, receipt of income or exercise of any other attribute of ownership) or encumbrance of any kind.

"***Liquidator***" – as set forth in Section 9.2(b).

"***Majority-in-Interest of the Class A Members***" – at any time, the Class A Member(s) whose collective Class A Units held at such time exceed 50% of all Class A Units issued and outstanding at such time.

"***Member***" – each of the Persons listed on the signature pages attached hereto, as well as each Substituted Member and each Additional Member.

"***Member Register***" – as set forth in Section 3.2.

"***Minority Member***" – any Member other than the Ares Members as of the date hereof, and such Member's Permitted Transferees.

"***MSD Director***" – as set forth in Section 7.2(a)(ii).

"***MSD Member***" – MSD Credit Opportunity Fund, L.P.

"***Observer***" – as set forth in Section 7.3(d)(ii).

"***Offer Price***" – as set forth in Section 8.4(a)(ii).

"***Officer***" – as set forth in Section 7.5.

"***Original Limited Liability Company Agreement***" – as set forth in the Recitals.

"***Other Business***" – as set forth in Section 6.3(c).

"***Percentage Interest***" – with respect to each Member, a fraction, expressed as a percentage, the numerator of which is the number of Units held by such Member, and the denominator of which is the aggregate number of Units held by all Members of the Company or all Members in the Class or series of a Class, as the context requires, on a fully diluted basis.

"***Permitted ABL Facility***" – any "Permitted ABL Facility" as defined in the Exit Facility.

"***Permitted Recipients***" – as set forth in Section 12.1.

"***Permitted Transferee***" – with respect to a Member, an Affiliate of such Member.

"***Person***" – any individual, partnership, limited liability company, association, corporation, trust or other entity.

"***Plan Effective Date***" – the "Effective Date" as defined in the Plan.

"***PR Issuance***" – as set forth in Section 6.4(a).

"***Preemptive Rights Holder***" – each Class A Member; *provided* that such Class A Member is a "qualified institutional buyer" within the meaning of Rule 144A of the Securities Act or an "accredited investor" within the meaning of Rule 501 of Regulation D under the Securities Act.

"***Prepetition Term Loan Agreement***" – as set forth in the Recitals.

"***Prepetition Term Loan Lenders***" – as set forth in the Recitals.

"***Prepetition Term Loans***" – as set forth in the Recitals.

"***Public Offering***" – any sale of the Units pursuant to an effective registration statement under the Securities Act filed with the Commission; *provided* that any issuance of Units as consideration for a merger or acquisition shall not be considered a "Public Offering".

"***Recapitalization***" – as set forth in Section 8.11(d).

"***Regulation***" – a Treasury Regulation promulgated under the Code.

"***Related Person***" – as set forth in Section 6.3(b).

"***Representatives***" – as set forth in Section 12.1.

"***Restructuring Transactions***" – as set forth in the Recitals.

"***ROFO Exercise Notice***" – as set forth in Section 8.4(b).

"***ROFO Notice***" – as set forth in Section 8.4(a).

"***ROFO Outside Date***" – as set forth in Section 8.4(a)(iv).

"***ROFO Units***" – as set forth in Section 8.4(a)(i).

"***Sale Documents***" – as set forth in Section 8.1(a).

"***Sanctioned Country***" – at any time, a country, region or territory which is itself the subject or target of any comprehensive Sanctions broadly prohibiting dealings in, with or involving such country, region or territory.

"***Sanctioned Person***" – (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State or any other relevant national or supra-national sanctions authority; (b) any Person organized or resident in a Sanctioned Country; (c) any Person owned or controlled by any such Person or Persons described in the foregoing clause (a) or (b); or (d) any Person that is otherwise the subject or target of any Sanctions.

"***Sanctions***" – all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or by the U.S. Department of State, or by any other relevant national or supra-national sanctions authority.

"***Securities***" – any foreign or domestic "securities," as defined in Section 2(1) of the Securities Act, or Section 3(a)(10) of the Exchange Act, and shall include common or preferred stocks, limited partnership interests, investment contracts, certificates of deposit, trade acceptances and trade claims, convertible securities, fixed income securities, notes or other evidences of indebtedness of other Persons, warrants, rights, synthetic securities, put and call options on any of the foregoing, other options related thereto, interests or participations therein or any combination of any of the foregoing.

"***Securities Act***" – the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"***Seller Representative***" – as set forth in Section 8.2(e).

"***Selling Holder***" – as set forth in Section 8.4(a).

"***Subsidiaries***" – all Persons in which the Company owns, directly or indirectly, more than fifty percent (50%) of the capital stock or other ownership interest. Subsidiaries shall include, as of the date hereof and after giving effect to the Restructuring Transactions: (i) VPROP Operating, (ii) Lonestar Prospects Management, L.L.C., a Texas limited liability company, (iii) Lonestar Prospects, Ltd., a Texas limited partnership, (iv) MAALT Specialized Bulk, LLC, a Texas limited liability company, (v) Denetz Logistics, L.L.C., a Texas limited liability company, and (vi) MAALT, L.P., a Texas limited partnership.

"***Substituted Member***" – any Person admitted to the Company as a substituted Member pursuant to the provisions of Article VIII.

"***Supermajority-in-Interest***" – at any time, the vote of a number of Class A Units held by Class A Members which, at such time, exceeds [**80**]% of the aggregate number of Class A Units of the Company then issued and outstanding.

"***Tag-Along Members***" – as set forth in Section 8.3(a).

"***Tag-Along Notice***" – as set forth in Section 8.3(a).

"***Tag-Along Notice Period***" – as set forth in Section 8.3(b).

"***Tag-Along Outside Date***" – as set forth in Section 8.3(h).

"***Tag-Along Transaction***" – as set forth in Section 8.3(a).

"***Tag-Along Transaction Documents***" – as set forth in Section 8.3(c).

"***Transaction Document***" – this Agreement, Certificate, the Plan, the Confirmation Order, and the agreements, certificates and instruments contemplated herein and therein.

"***Transfer***" – any transfer, sale, conveyance, exchange, assignment, pledge, encumbrance, hypothecation or other disposition, whether directly or indirectly (pursuant to the transfer of an economic or other interest, the creation of a derivative security or otherwise), the grant of an option or other right or the imposition of a restriction on disposition or voting or by operation of law. When used as a verb, "Transfer" shall have the correlative meaning (whether with or without consideration and whether voluntarily or involuntarily or by operation of law). In addition, "Transferred", "Transferor" and "Transferee" shall have the correlative meanings.

"***UCC***" – as set forth in Section 12.2.

"***Units***" – a fractional Interest in the Company.

"***Value***" – with respect to of any asset of the Company, as the case may be, as of any date, the fair market value of such asset, as the case may be, as of such date, as reasonably determined by the Board of Directors.

"***Void Transfer***" – as set forth in Section 8.1(a).

"***VPL***" – as set forth in the Recitals.

"***VPROP Operating***" – as set forth in the Recitals.

"***Withdrawing Member***" – as set forth in Section 8.1(d)(vii).

Section 2.2. Rules of Interpretation. Unless the context otherwise clearly requires: (a) a term has the meaning assigned to it; (b) wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and

pronouns stated in either the masculine, feminine or neuter shall include the masculine, feminine and neuter; (c) provisions apply to successive events and transactions; (d) all references in this Agreement to "include" or "including" or similar expressions shall be deemed to mean "including without limitation"; (e) all references in this Agreement to designated "Articles," "Sections," "paragraphs," "clauses," "Annexes," "Schedules" and other subdivisions are to the designated Articles, Sections, paragraphs, clauses, Annexes, Schedules and other subdivisions of this Agreement, and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph, clause or other subdivision; (f) all references in this Agreement to "$" shall mean United States dollars; and (g) any definition of or reference to any agreement, instrument, document, statute or regulation herein shall be construed as referring to such agreement, instrument, document, statute or regulation as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein). This Agreement is among financially sophisticated and knowledgeable parties and is entered into by the parties in reliance upon the economic and legal bargains contained herein and shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party who prepared, or cause the preparation of, this Agreement or the relative bargaining power of the parties. Wherever in this Agreement a Member or other Person is empowered to take or make a decision, direction, consent, vote, determination, election, action or approval, such Member or Person is entitled to consider, favor and further such interests and factors as it desires, including its own interests, and has no duty or obligation to consider, favor or further any other interest of the Company, any Subsidiary or any other Member or Person. Wherever in this Agreement a Member is permitted or required to make a decision or determination or take an action in its "discretion" or its "judgment," that means that, *except* to the extent such discretion is otherwise qualified herein, such Member may take that decision in its "sole discretion" or "sole judgment" without regard to the interests of any other Person.

ARTICLE III
CAPITAL CONTRIBUTIONS

Section 3.1. Units; Issuance of Additional Units.

(a) Authorization; Units Generally. Subject to the terms of this Section 3.1, the Company is hereby authorized to issue an unlimited aggregate number of Units divided into any number of Classes, which Units are initially comprised of one class of Units called Class A Units (the "***Class A Units***"), having the rights, obligations, and other features provided in this Agreement. In connection with any issuance of a new class or series of Units, Section 4.1 may be amended to reflect this issuance of such new class or series of Units and the distribution rights applicable thereto.

(b) Issuances of Class A Units. Pursuant to the terms of the Plan and the Confirmation Order, the Contributed Prepetition Debt was contributed to the Company in exchange for Class A Units. As of the date hereof, each Person listed on Schedule A is admitted as a Member of the Company and shall be shown as such on the books and records of the Company. As of the date hereof, each such Member is deemed to have made a Capital Contribution in the amount set forth opposite the name of such Person on Schedule A and holds the Class A Units set forth opposite such Member's name thereon.

(c) Subject to compliance with the provisions of this Agreement, the Board shall have the right to cause the Company to issue or sell to any Person (including Members and their Affiliates), at any time and from time to time, any of the following: (i) (A) additional Units or (ii) (B) other interests in the Company (including other classes or series thereof having different rights and/or preferences, including interests issued pursuant to a management incentive plan approved by the Board) to any Person (such Person, an "***Additional Member***") for any amount of consideration, if any, as determined by the Board of Directors and, subject to paragraphs (c), (d) and (e) of this Section 3.1, admit such Person as an Additional Member with all of the rights and obligations of a Member under this Agreement, (ii) obligations, evidences of indebtedness, or other securities or interests convertible or exchangeable into Units or other interests in the Company, and (iii) warrants, options, or other rights to purchase or otherwise acquire Units or other interests in the Company. Subject to the approval of the Board, in connection with the issuance pursuant to and in accordance with this Section 3.1 of any class or series of Units or other interests in the Company, this Agreement may be amended, and the Board may authorize any Person to execute, acknowledge, deliver, file and record, if required, such documents to the extent necessary or desirable to reflect the admission of any Additional Member to the Company or the authorization and issuance of such class or series of Units or other interests in the Company (or securities convertible into or exercisable or exchangeable for Units or other interests in the Company), and the related rights and preferences thereof.

(d) Each Person desiring to become an Additional Member shall be admitted to the Company upon the approval of the Board of Directors and the delivery of a counterpart signature page to this Agreement that has been duly executed and delivered to the Company and any other documentation required by the Board of Directors.

(e) Except as otherwise required by law or pursuant to this Section 3.1, no Member shall be required or permitted to make any additional Capital Contributions to the Company without the prior consent of such Member and the Board of Directors.

Section 3.2. Member Register. The Company shall create and maintain a Unit ledger and register of Members and other Persons holding other securities or interests in the company (the "***Member Register***"), setting forth at least: (a) the name of each Member, (b) the number of Units held by each such Member, (c) the amount, if any, of all options, warrants or other securities or interests and (d) the amount of the Capital Contribution made or deemed to have been made for each class of Units held by each Member. The Member Register is attached to this Agreement as Schedule A. Upon any change in the number or ownership of outstanding Units (whether upon an issuance of Units, a Transfer, a cancellation of Units or otherwise) or upon the conversion or exercise of any options or warrants, the Company shall amend and update the Member Register. The ownership interests recorded on the Member Register shall be conclusive record of the Units that have been issued and are outstanding.

Section 3.3. Interest on Capital Contributions. No Member shall be entitled to interest on or with respect to any Capital Contribution.

Section 3.4. Withdrawal and Return of Capital Contributions. Except as provided in this Agreement, no Member shall be entitled to withdraw any part of such Member's Capital Contribution or to receive distributions from the Company.

Section 3.5. Form of Capital Contribution. Unless otherwise agreed to by the Board of Directors, all Capital Contributions, other than those being made on the date hereof, shall be made in cash.

Section 3.6. Certificates. The Board may in its discretion determine whether or not the Company will issue certificates to one or more Members representing the Units held by such Member. The issuance of any such certificate is not intended to affect the rights or obligations of a Member with respect to its Units. Each certificate evidencing Units and each certificate issued in exchange for or upon the Transfer of any Units shall be stamped or otherwise imprinted with a legend in substantially the same form as the legend set forth on the cover page of this Agreement.

Section 3.7. Title to Company Assets. All Company assets shall be deemed to be owned by the Company as an entity, and no Member, individually or collectively, shall have any ownership interest in such Company assets or any portion thereof. Legal title to any or all Company assets may be held in the name of the Company or one or more nominees, as the Board may determine. All Company assets shall be recorded as the property of the Company on its books and records, irrespective of the name in which legal title to such Company assets is held.

Section 3.8. No Right of Partition. No Member shall have the right to seek or obtain partition by court decree or operation of law of any Company property, or the right to own or use particular or individual assets of the Company.

Section 3.9. Loans from Members. Loans by Members to the Company shall not be considered Capital Contributions. The amount of any such loans shall be a debt of the Company to such Member and shall be payable or collectible in accordance with the terms and conditions upon which such loans are made.

ARTICLE IV
DISTRIBUTIONS

Section 4.1. Distributions. Subject to the provisions of Sections 4.2, 4.3, 4.4, 9.2 and 12.3, the Company shall distribute Available Cash at the times and in amounts determined by the Board of Directors in its sole discretion, which distributions shall be made to the holders of Units pro rata in proportion to their holdings of all Units then outstanding.

Section 4.2. Limitations on Distributions.

(a) Notwithstanding anything to the contrary herein, no distribution pursuant to this Agreement shall be made if such distribution would result in a violation of the Act.

(b) In the event that a distribution is not made as a result of the application of paragraph (a) of this Section 4.2, all amounts so retained by the Company shall continue to be subject to all of the debts and obligations of the Company. The Company shall make such distribution (with accrued interest actually earned thereon) as soon as such distribution would not be prohibited pursuant to this Section 4.2.

Section 4.3. Reserves. The Company may establish reserves in such amounts and for such time periods as the Board of Directors determines reasonably necessary for estimated accrued

Company expenses and any contingent or unforeseen Company liabilities. When such reserves are no longer necessary, the balance may be distributed to the Members in accordance with this Article IV.

Section 4.4. Withholding. The Company shall comply with all withholding requirements under U.S. federal, state and local and foreign law and shall remit amounts withheld to and file required forms with the applicable jurisdictions. To the extent the Company is required to withhold and pay over any amounts to any authority with respect to distributions to any Member or to the extent the Company is required to pay any income tax (including interest and penalties) that (as reasonably determined by the Board of Directors based upon this Agreement) is attributable to any Member, the amount withheld or paid shall be deemed to be, at the option of the Board of Directors, either a distribution by the Company to such Member (which shall reduce the amounts that would subsequently otherwise be distributed to such Member pursuant to Section 4.1 in the order in which they would otherwise have been distributable) or a demand loan by the Company to such Member, in each case in the amount of the withholding or payment.

ARTICLE V
BOOKS OF ACCOUNT

Section 5.1. Books and Records. Proper and complete records and books of account shall be kept by the Company in which shall be entered fully and accurately all transactions and other matters relative to the Company's business as are usually entered into records and books of account maintained by Persons engaged in businesses of a like character. The Company books and records shall be kept in a manner determined by the Board of Directors in its sole discretion to be most beneficial for the Company. The books and records shall at all times be maintained at the principal office of the Company and shall be open to the inspection and examination of the Members or their duly authorized representatives for a proper purpose as set forth in Section 18-305 of the Act during reasonable business hours and at the sole cost and expense of the inspecting or examining Member.

Section 5.2. Reports.

(a) As soon as reasonably practicable after the close of each fiscal year of the Company, but in any event not later than one hundred and twenty (120) days after the end of each fiscal year of the Company, the Company shall provide to each Member a copy of the audited consolidated financial statements and financial information of the Company and its subsidiaries, including an income statement, balance sheet, and statement of cash flows.

(b) As soon as reasonably practicable after the end of each of the first three fiscal quarters of each fiscal year, but in any event not later than sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year of the Company, the Company shall provide to each Member the unaudited consolidated financial statements and financial information of the Company and its subsidiaries for such quarter and year-to-date period, including an income statement, balance sheet, and statement of cash flows.

(c) As soon as reasonably practicable after the end of each month of each fiscal year, the Company shall provide to each Member the unaudited consolidated financial statements

and financial information of the Company and its subsidiaries for such month and year-to-date period, including an income statement, balance sheet, and statement of cash flows.

ARTICLE VI
POWERS, RIGHTS AND DUTIES OF THE MEMBERS

Section 6.1. **Limitations**. Other than as set forth in this Agreement, the Members shall not participate in the management or control of the Company's business nor shall they transact any business for the Company, nor shall they have the power to act for or bind the Company, said powers being vested solely and exclusively in the Board of Directors. Without limiting the foregoing, neither the lending of money to the Company by a Member or any Affiliate thereof nor the service by a Member or its appointee on the Board shall be deemed to constitute participation in control of the Company or affect, impair or eliminate the limitations on the liability of a Member under this Agreement.

Section 6.2. **Liability**. Subject to the provisions of the Act, no Member shall be liable for the repayment, satisfaction or discharge of any Company liabilities. No Member shall be personally liable for the return of any portion of the Capital Contributions (or any return thereon) of any other Member.

Section 6.3. **Fiduciary Duties; Investment Opportunities and Conflicts of Interest**.

(a) Any duties (including fiduciary duties) or other obligations that the Members may or would otherwise owe in their capacities as Members to one another and to the Company are expressly eliminated, waived and disclaimed by the Company and the Members to the fullest extent permitted by Section 18-1101(c) of the Act.

(b) No Member, any of its Affiliates, or any of their respective managers, directors, officers, stockholders, partners, members, employees, representatives and agents (including any of their representatives serving on the Board or on the board of directors or board of managers of the Subsidiaries or as an officer of the Company or any Subsidiary) (the "***Related Persons***"), shall have any obligation to bring investment or business opportunities to the Company of which such Related Person becomes aware and which are, or may be, (i) within the scope of the business of the Company and the Subsidiaries or investment objectives related to the business of the Company and the Subsidiaries or (ii) otherwise competitive with the business of the Company and the Subsidiaries, and shall not in any way be restricted from pursuing or consummating (directly or indirectly) any such opportunities.

(c) Related Persons at any time and from time to time may engage in and own interests in other business ventures of any and every type and description, independently or with others (including ones in competition with the Company) (an "***Other Business***") with no obligation to (i) refrain from pursuing or engaging in such Other Business, (ii) offer to any Person the right to participate in such Other Business, or (iii) notify any Person thereof. Related Persons may direct any investment or business opportunities to any other Person regardless of the capacity (*e.g.*, in the capacity of a Director) in which such investment or business opportunities are presented to a Related Person. None of the Company, any of the Subsidiaries or any Member will have or acquire or be entitled to any interest, expectancy or participation (the foregoing being hereby renounced

and waived to the fullest extent permitted from time to time under applicable law) in any investment or business opportunity as a result of the involvement therein of any Related Persons. The involvement of any of the Related Persons in any investment or business opportunity will not constitute a conflict of interest, breach of any duty (including any fiduciary duty), or breach of this Agreement.

Section 6.4. Equity Preemptive Rights.

(a) In the event that the Company shall sell or issue any Units (including any warrants, options or other convertible securities exercisable or exchangeable for or convertible into Units) to a Class A Member or any of their respective subsidiaries or Affiliates following the date hereof, *except* in each case for a Public Offering of the Units (such sale or issuance, a "***PR Issuance***"), each Preemptive Rights Holder shall have the right to purchase, subject to Section 6.4(c), such number of additional Units as are necessary to maintain such Preemptive Rights Holder's Percentage Interest, as determined on a Fully Diluted Basis, which Units shall be offered on the same terms and conditions as the Units being offered and sold in such PR Issuance; *provided*, that such subscription being conditioned upon the actual sale of the Units contemplated to be sold or issued in such PR Issuance, as the case may be; *provided*, *however*, that such preemptive right shall not extend to Units that are to be issued by the Company (i) by reason of a dividend, split, split-up, recapitalization or other distribution of or on Units; (ii) in connection with the exercise of warrants or convertible securities; (iii) to employees, consultants, officers or directors of the Company pursuant to stock option plans or restricted stock plans or similar agreements or arrangements, including any interests pursuant to a management incentive plan; (iv) as consideration for a merger or acquisition, or (v) in a Public Offering of the Company.

(b) Written notice specifying the contemplated date the new Units are to be sold pursuant to the PR Issuance, the number of new Units to be sold and the material terms thereof shall be delivered by the Company to each Preemptive Rights Holder no later than fifteen (15) Business Days prior to such contemplated purchase date of the Units, and such Preemptive Rights Holder shall have until five (5) Business Days prior to the contemplated purchase date specified in such notice to inform the Company of its intentions as to the exercise of the preemptive right provided under this Section 6.4, including the maximum number of Units for which it wishes to exercise its preemptive rights (which for the avoidance of doubt, shall not exceed the number of additional Units as are necessary to maintain such Preemptive Rights Holder's Percentage Interest, as determined on a Fully Diluted Basis). If no written reply is received by the Company prior to the sixth (6th) Business Day before the contemplated purchase date specified in such notice, the Company may treat the preemptive right of such Preemptive Rights Holder to have been waived.

(c) Notwithstanding the other provisions of this Section 6.4, if the Board determines that it should, in the best interests of the Company, issue new Units that would otherwise be required to be offered to the Preemptive Rights Holders pursuant to this Section 6.4 prior to their issuance, the Company may issue such new Units without first complying with the provisions of this Section 6.4; *provided*, *however*, that (i) the Company shall, within thirty (30) days after such issuance, offer to each Preemptive Rights Holder the opportunity to purchase the number of new Units that such Preemptive Rights Holder would have otherwise been entitled to purchase pursuant to the terms of this Section 6.4, by written notice specifying the contemplated

date the new Units are to be sold and such Preemptive Rights Holder shall have until five (5) Business Days prior to the contemplated purchase date specified in such notice to inform the Company of its intentions as to the exercise of the preemptive right, including the maximum number of Units for which it wishes to exercise its preemptive rights (which for the avoidance of doubt, shall not exceed the number of additional Units as are necessary to maintain such Preemptive Rights Holder's Percentage Interest, as determined on a Fully Diluted Basis) and (ii) (1) include in the subscription (or similar) agreement with the purchaser(s) of such new Units a provision permitting the Company to repurchase such Units in an amount necessary to satisfy the provisions of this Section 6.4 or (2) cause the issuance of additional Units in an amount necessary to permit each requesting Preemptive Rights Holder to purchase the number of Units that it would have been entitled to purchase in the original issuance under Section 6.4(a).

Section 6.5. Debt Preemptive Rights.

(a) In the event that the Company or any of its Subsidiaries shall enter into any agreement with a Class A Member (or its Affiliates) to obtain Affiliate Indebtedness, each Preemptive Rights Holder shall have the right to participate as a lender under any agreement governing the issuance of such Affiliate Indebtedness, in an aggregate principal amount equal to such Preemptive Rights Holder's pro rata portion of such Affiliate Indebtedness (determined by reference to such Preemptive Rights Holder's Percentage Interest of Class A Units).

(b) Written notice specifying the contemplated effective date of the agreement governing Affiliate Indebtedness, the aggregate principal amount of Affiliate Indebtedness thereunder, and the material terms thereof shall be delivered by the Company to each Preemptive Rights Holder no later than fifteen (15) Business Days prior to such contemplated effective date, and such Preemptive Rights Holder shall have until five (5) Business Days prior to the contemplated effective date specified in such notice to inform the Company of its intentions as to the exercise of the preemptive right provided under this Section 6.5(a), including the aggregate principal amount of indebtedness for which it wishes to exercise its preemptive rights (which for the avoidance of doubt, shall not exceed such Preemptive Rights Holder's pro rata portion of such Affiliate Indebtedness (determined by reference to such Preemptive Rights Holder's Percentage Interest of Class A Units)). If no written reply is received by the Company prior to the sixth (6th) Business Day before the contemplated effective date specified in such notice, the preemptive right of such Preemptive Rights Holder with respect to such issuance of Affiliate Indebtedness shall be deemed to have been waived by such Preemptive Rights Holder.

Section 6.6. Certain Consent Rights. The Company shall not take any of the following actions without the prior written approval of a Supermajority-in-Interest, which may be given by means of electronic mail:

(a) enter into any transaction between the Company, on the one hand, and any Affiliate of the Company (excluding the Subsidiaries), or any Class A Member (and its Affiliates) on the other hand, excluding, in each case, (i) transactions for the purchase of goods or services entered into in the ordinary course of business and on an arm's-length basis, (ii) any PR Issuances, (iii) the Exit Facility and the issuance of Exit Facility Loans from time to time thereunder, and (iv) any issuances of Affiliate Indebtedness;

(b) make any distribution in a manner inconsistent with Section 4.1 (as may be amended by the Board from time to time to reflect the issuance of any new class or series of Units); and

(c) make any amendment, waiver or modification of this Agreement that materially, adversely and disproportionately affect the Minority Members, taken as a whole, relative to the other Class A Members, taken as a whole (other than any amendments made solely to address administrative tax matters or any amendments authorized by the Board in accordance with Section 11.2).

ARTICLE VII
POWERS, RIGHTS AND DUTIES OF THE BOARD OF DIRECTORS

Section 7.1. Management by the Board of Directors.

(a) Authority of Board of Directors. A Board of Directors shall be established to manage the business and affairs of the Company in accordance with the terms of this Agreement. Except as specifically provided in this Agreement, the Board of Directors shall have exclusive and complete authority and discretion to manage the operations and affairs of the Company and to make all decisions regarding the business of the Company. Any action authorized by the Board of Directors shall constitute the act of and serve to bind the Company. Persons dealing with the Company are entitled to rely conclusively on the power and authority of the Board of Directors as set forth in this Agreement.

(b) Powers and Duties of the Board of Directors. The Board of Directors shall have all rights and powers of a "manager" under the Act, and shall have such authority, rights and powers in the management of the Company business to do any and all other acts and things necessary, proper, convenient or advisable to effectuate the purposes of this Agreement. Except as expressly provided in this Agreement, the Members shall not manage or control the business and affairs of the Company.

(c) Acknowledgement by Members. Each Member acknowledges and agrees that no Director shall, solely as a result of being a Director, be bound or obligated to devote all of his business time to the affairs of the Company, and that he and his Affiliates do and will continue to engage for their own account and for the accounts of others in other business ventures.

(d) Reliance by Third Parties. Any Person dealing with the Company may rely on the authority of the Board (or any Officer authorized by the Board) in taking any action in the name of the Company without inquiry into the provisions of this Agreement or compliance herewith, regardless of whether that action actually is taken in accordance with the provisions of this Agreement. Every agreement, instrument or document executed by any Officer authorized by the Board, including at least one Ares Director, in the name of the Company with respect to any business or property of the Company shall be conclusive evidence in favor of any Person relying thereon or claiming thereunder that (i) at the time of the execution or delivery thereof, this Agreement was in full force and effect, (ii) such agreement, instrument or document was duly executed according to this Agreement and is binding upon the Company and (iii) such Officer was

duly authorized and empowered to execute and deliver such agreement, instrument or document for and on behalf of the Company.

Section 7.2. Composition and Election of the Board of Directors.

(a) Number and Designation. The number of Directors on the Board shall be the number serving pursuant to clauses (i) through (iii). Subject to the provisions of this Section 7.2, the Board shall at all times comprise the following Persons:

(i) up to four (4) representatives appointed by the Ares Member (the "***Ares Directors***"), who initially shall be [●], [●], [●] and [●];

(ii) one (1) representative appointed by the MSD Member (the "***MSD Director***"); *provided*, that the right to appoint such representative is personal to the MSD Member and may not be assigned or transferred to any other Person;

(iii) one (1) representative appointed by the AG Member (the "***AG Director***"); *provided*, that the right to appoint such representative is personal to the AG Member and may not be assigned or transferred to any other Person; and

(iv) one (1) Independent Director appointed by a Majority-in-Interest of the Class A Members pursuant to Section 7.8, [**whom the Class A Members expect to appoint after the date hereof**].

(b) Term. Directors shall serve from their appointment in accordance with the terms hereof until their resignation, death or removal in accordance with the terms hereof. Directors need not be Members and need not be residents of the State of Delaware. A Person shall become a Director and member of the Board effective upon receipt by the Company at its principal place of business of a written notice addressed to the Board (or at such later time or upon the happening of some other event specified in such notice) of such Person's appointment from the Person or Persons entitled to appoint such director pursuant to Section 7.2(a); *provided* that the Persons specifically named in Section 7.2(a) shall be Directors commencing on the date hereof without further action. A Director may resign as such by delivering his, her or its written resignation to the Company at the Company's principal office addressed to the Board. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

(c) Removal. The removal from the Board or any of its committees (with or without cause) of any Ares Director, the MSD Director, the AG Director or the Independent Director shall be upon (and only upon) the written request of the Member or Members entitled to appoint such Director pursuant to Section 7.2(a).

(d) Vacancies. In the event that any appointee under Section 7.2(a) for any reason ceases to serve as a member of the Board, (i) the resulting vacancy on the Board may be filled by the Member or Members entitled to appoint such member pursuant to Section 7.2(a) and (ii) such appointee shall be removed promptly after such time from each committee of the Board.

(e) Reimbursement. The Company shall pay all reimbursable reasonable out-of-pocket costs and expenses incurred by each member of the Board in the course of their service hereunder, including in connection with attending regular and special meetings of the Board, any board of managers or board of directors of each of the Subsidiaries and/or any of their respective committees.

(f) Compensation of Directors. Except as approved by the Board, Directors shall receive no compensation for serving in such capacity.

(g) Subsidiary Board of Directors or Board of Directors. The Company shall at all times, unless otherwise determined by the Board in its discretion, cause the board of managers or board of directors of each of the Subsidiaries to comprise the same Persons who are then Directors of the Board pursuant to Section 7.2(a). The voting rules on the board of managers or board of directors of each of the Subsidiaries shall be commensurate with the voting rules of the Board.

Section 7.3. Board Meetings; Actions by Written Consent; Voting.

(a) Action by the Board; Written Consent; Telephone Conferences. Each Director shall have one vote; *provided, however*, that in the event that any Ares Director is absent or if there is any vacancy in the Ares Directors at any time when there is at least one (1) Ares Director (for example, if the Ares Member has only designated three (3) of its four (4) Directors), the vote of each of the Ares Directors present at a meeting (or consenting to any written consent) shall be automatically multiplied by a fraction, the numerator of which is the number of Directors that the Ares Member is entitled to appoint pursuant to Section 7.2(a) and the denominator of which is the number of Ares Directors present or consenting. Only the affirmative vote of a majority of the Directors present at a meeting (or consenting to any written consent) (in each case, which majority shall in all cases include the affirmative vote of at least one Ares Director) at which a quorum is present and entitled to vote thereon, shall be an act (including the granting of any consent under the Agreement) of the Board. Any action (including the granting of any consent under this Agreement) permitted or required by the Act, the Certificate or this Agreement to be taken at a meeting of the Board or any committee designated by the Board may be taken without a meeting, without notice and without a vote if a consent in writing, setting forth the action to be taken, is signed by a majority of the Directors then in office or on such committee, which majority shall include at least one Ares Director. Such consent shall have the same force and effect as a vote at a meeting and may be stated as such in any document or instrument filed with the Secretary of State of the State of Delaware, and the execution of such consent shall constitute attendance or presence in person at a meeting of the Board or any such committee, as the case may be. Subject to the requirements of the Act, the Certificate or this Agreement for notice of meetings, unless otherwise restricted by the Certificate, the Directors or members of any committee designated by the Board may participate in and hold a meeting of the Board or any committee, as the case may be, by means of a conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in such meeting shall constitute attendance and presence in person at such meeting, *except* where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(b) Quorum. The majority of the Directors then in office (which must include at least one Ares Director) must be present at any meeting of the Board or any committee thereof (including for purposes of actions taken pursuant to Section 7.3(a)) in order to constitute a quorum for the transaction of business of the Board or such committee. Once a quorum is present to commence a meeting of the Board or any committee thereof, such quorum shall be broken as soon as (i) there shall cease to be a majority of the Directors then in office present at such meeting or (ii) all of the Ares Directors leave such meeting, and no further business may be transacted at such meeting until such time as a quorum shall again be present. If a quorum shall not be present during a meeting of the Board or any committee thereof, the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. A Director who is present at a meeting of the Board or any committee thereof at which action on any matter is taken shall be presumed to have assented to the action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the Person acting as secretary of the meeting before the adjournment thereof or shall deliver such dissent to the Company immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

(c) Meetings. Regular meetings of the Board may be held at such times and places as shall be determined from time to time by resolution of the Board. Notice of regular meetings shall not be required. Except as otherwise provided in this Agreement, special meetings of the Board may be called by any Ares Director on at least 24 hours' notice to each other Director. Such notice need not state the purpose or purposes of, nor the business to be transacted at, such meeting, *except* as may otherwise be required by law or provided for in this Agreement. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, *except* where a Director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. In connection with any meeting of Members, the Directors may, if a quorum is present, hold a meeting for the transaction of business immediately after and at the same place as such meeting of the Members, and notice of such meeting at such time and place shall not be required.

(d) Board Observers.

(i) The Chief Executive Officer of the Company shall be entitled to attend meetings and receive related materials of the Board as an observer (the "***Executive Director Observer***").

(ii) Each Class A Member whose collective Class A Units held at such time exceed 10% of all Class A Units issued and outstanding at such time may designate one individual to attend meetings and receive related materials of the Board as observers (each such individual, a "***Class A Observer***" and, together with the Executive Director Observer, the "***Observers***").

(iii) No Observer shall in any circumstance have any right to participate in any vote, consent or other action of the Board of Directors. Any Observer may be excluded from any meeting or portion thereof if (A) the Board determines that it is necessary to (1) preserve attorney-client, work product or similar privilege, (2) comply with the terms and conditions of confidentiality agreements with third

parties, or (3) comply with applicable law or (B) there exists, with respect to the subject of a meeting or materials provided to the Board, an actual or potential conflict of interest between the Board or the Company and such Observer.

Section 7.4. Committees; Delegation of Authority and Duties.

(a) Committees. The Board may, from time to time, designate one or more committees, each of which shall include at least one Ares Director; *provided, however*, that, subject to Section 7.3(d)(iii), any Observer shall have the right to attend meetings of each committee on a non-voting basis and receive related materials of such committees as observers with respect to each committee on which such Observer does not serve. Any such committee, to the extent provided in the enabling resolution or in the Certificate or this Agreement, shall have and may exercise all of the authority of the Board. The Board may dissolve any committee at any time, unless otherwise provided in the Certificate or this Agreement.

(b) Delegation. The Board may, from time to time, delegate to one or more Persons (including any Director or Officer) such authority and duties as the Board may deem advisable. The Board also may assign titles (including chairman, chief executive officer, president, vice president, secretary, assistant secretary, treasurer and assistant treasurer) to any Director, Member or other individual and may delegate to such Director, Member or other individual certain authority and duties. Any number of titles may be held by the same Director, Member or other individual. Any delegation pursuant to this Section 7.4(b) may be revoked at any time by the Board.

Section 7.5. Officers. The Board may (but need not), from time to time, designate and appoint, by written resolution, one or more Persons as an officer of the Company (an "***Officer***"). No Officer need be a resident of the State of Delaware, a Member or a Director. Any Officers so designated shall have such authority and perform such duties as the Board may, from time to time, delegate to them by written resolution. The Board may assign titles to particular Officers. Unless the Board otherwise decides, if the title is one commonly used for officers of a business corporation formed, the assignment of such title by written resolution shall constitute the delegation to such Officer of the authority and duties that are normally associated with that office, subject to (a) any specific delegation of authority and duties made to such Officer by the Board by written resolution pursuant to the third sentence of this Section 7.5 or (b) any delegation of authority and duties made to one or more Officers pursuant to the terms of Section 7.4(b). Each Officer shall hold office until such Officer's successor shall be duly designated and qualified by written resolution or until such Officer's death or until such Officer shall resign or shall have been removed in the manner hereinafter provided. The management of the business and affairs of the Company by the Officers and the exercising of their powers shall be conducted under the supervision of and subject to the written approval of the Board. Any number of offices may be held by the same individual. Any Officer may be removed as such, either with or without cause, by the Board in its discretion at any time; *provided*, *however*, that any such removal shall be without prejudice to the contract rights, if any, of the individual so removed. Designation of an Officer shall not of itself create contract rights. Any vacancy occurring in any office of the Company may be filled by the Board and shall remain vacant until filled by the Board. The officers of the Company as of the date hereof are set forth on Schedule B.

Section 7.6. Standard of Board and Director Actions.

(a) No Duties. To the fullest extent permitted by the Act, a Person, in performing his or her duties and obligations as a Director under this Agreement, will not owe any fiduciary duties to the Company or any other Member or Director of the Company and will be entitled to act or omit to act at the direction of the Members, if any, that appointed such Person to serve on the Board.

(b) The Members (in their own names and in the name and on behalf of the Company) hereby:

(i) agree that (A) the terms of this Section 7.6, to the extent that they modify or limit a duty or other obligation, if any, that a Director may have to the Company or any Member under the Act or other applicable Law are reasonable in form, scope and content; and (B) the terms of this Section 7.6 will control to the fullest extent possible if it is in conflict with a duty, if any, that a Director may have to the Company or any Member, under the Act or any other applicable law; and

(ii) waive to the fullest extent permitted by the Act, any duty or other obligation, if any, that a Member may have to the Company or another Member, pursuant to the Act or any other applicable law, to the extent necessary to give effect to the terms of this Section 7.6.

(c) To the extent that, at law or in equity, any Director would otherwise have duties (including fiduciary duties) and liabilities relating thereto to the Company, any Member, any other Director, or any other Person, such Director shall not be liable to the Company, any Member, any other Director, or any other Person for breach of duty (including fiduciary duty) for its good-faith reliance on the provisions of this Agreement, and the provisions of this Agreement, to the extent that they restrict or eliminate the duties (including fiduciary duties) and liability of such Director otherwise existing at law or in equity, are agreed by the Company and each Member to replace such other duties and liabilities of such Director.

(d) Board Discretion. Whenever in this Agreement or any other agreement contemplated herein (or any other agreement to which the Company is a party), any of the Directors or the Board (or any committee thereof) is permitted or required to take any action or to make a decision or determination (including any action, decision or determination in its "sole discretion", "discretion," with "complete discretion" or under a grant of similar authority or latitude), *except* to the extent such discretion is otherwise qualified herein, each Director shall be entitled to consider such interests and factors as such Director desires (including, the interests of such Director and such Director's Affiliates, employer, partners and their Affiliates), and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company, the Members or any other Person.

(e) Good Faith. Notwithstanding the foregoing, nothing herein shall be deemed a waiver of the implied covenant of good faith and fair dealing; *provided*, that any Person bringing, pleading or prosecuting any claim with respect to any action taken or decision or determination made by the Board (or any committee thereof) shall have the burden of proving that such action,

decision or determination was not taken or made in compliance with the implied covenant of good faith and fair dealing; *provided further*, that for the avoidance of doubt, this sentence shall not be deemed to increase or place any duty (including any fiduciary duty) other than the implied covenant of good faith and fair dealing on the Board or its Directors.

(f) Effect on Other Agreements. This Section 7.6 shall not in any way affect, limit or modify any Officer's or employee's liabilities or obligations under any employment agreement, consulting agreement, confidentiality agreement, noncompete agreement, nonsolicit agreement or any similar agreement with the Company or any of the Subsidiaries.

(g) Other. Nothing in this Agreement or any other current or future agreement shall limit this Section 7.6 or the intent of the parties set forth in the first sentence of this Section 7.6. This Section 7.6 supersedes any and all prior agreements and understandings with respect to the subject matter of this Section 7.6. No amendment or modification of this Agreement shall limit this Section 7.6 with respect to actions taken prior to such amendment.

Section 7.7. Indemnification.

(a) To the fullest extent permitted by applicable law, the Company shall and does hereby agree to indemnify and hold harmless and pay all judgments and claims against any Director and each Member, any Affiliate thereof, and their respective officers, directors, employees, stockholders, partners (limited and/or general), managers, members, consultants or agents, and each officer of the Company (the "***Indemnified Parties***", each of which shall be a third party beneficiary of this Agreement solely for purposes of this Section 7.7), from and against any loss or damage incurred by them or by the Company or Subsidiaries for any act or omission taken or suffered by the Indemnified Parties (including, without limitation, any act or omission taken or suffered by any of them in reliance upon and in accordance with the opinion or advice of experts, including of legal counsel as to matters of law, of accountants as to matters of accounting, or of investment bankers or appraisers as to matters of valuation) in connection with the business of the Company or the Subsidiaries, including costs and reasonable attorneys' fees and any amount expended in the settlement of any claims or loss or damage, *except* with respect to which such Indemnified Party committed fraud, engaged in willful misconduct or willfully breached this Agreement, in each case as determined pursuant to a final, non-appealable judgment by a court of competent jurisdiction. To the fullest extent permitted by applicable law, no Indemnified Party in its capacity as a Director or a Member of the Company shall be liable, in damages or otherwise, to the Company, the Members or any of their Affiliates for any act or omission performed or omitted by any of them (including, without limitation, any act or omission performed or omitted by any of them in reliance upon and in accordance with the opinion or advice of experts, including, without limitation, of legal counsel as to matters of law, of accountants as to matters of accounting, or of investment bankers or appraisers as to matters of valuation), *except* with respect to which such Indemnified Party committed fraud, engaged in willful misconduct or willfully breached this Agreement, in each case as determined pursuant to a final, non-appealable judgment by a court of competent jurisdiction.

(b) The satisfaction of any indemnification obligation pursuant to this Section 7.7 shall be from and limited to Company assets (including insurance and any agreements

pursuant to which the Company, its officers or employees are entitled to indemnification) and no Member, in such capacity, shall be subject to any personal liability for such obligations.

(c) Expenses reasonably incurred by an Indemnified Party in defense or settlement of any claim that may be subject to a right of indemnification hereunder shall be advanced by the Company prior to the final disposition thereof upon receipt of an undertaking by or on behalf of such Indemnified Party to repay such amount to the extent that it shall be determined upon final adjudication by a court of competent jurisdiction after all possible appeals have been exhausted that such Indemnified Party is not entitled to be indemnified hereunder; *provided* that advancement shall not be available for any claim, action, suit or proceeding brought by an Indemnified Party.

(d) The Company shall purchase and maintain directors' and officers' liability insurance in amounts and on terms customary in the industry and reasonably acceptable to the Board of Directors. In addition, the Company may purchase and maintain insurance on behalf of one or more other Indemnified Parties and other Persons against any liability which may be asserted against, or expense which may be incurred by, any such Person in connection with the Company's activities, whether or not the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement.

(e) The Company hereby acknowledges that the Directors have or may in the future have certain rights to indemnification, advancement of expenses and/or insurance provided by the Class A Members in connection with the Directors' service as Directors. The Company hereby agrees (i) that it is the indemnitor of first resort in connection with the Directors' service as Directors (i.e., its obligations to the Directors are primary and any obligation of the Class A Members to advance expenses or to provide indemnification for the same expenses or liabilities incurred by the Directors are secondary), (ii) that it shall be required, subject to the terms of this Agreement, to advance the full amount of expenses incurred by any Director and shall be liable for the full amount of all judgments, claims, losses and damages to the extent legally permitted and as required by this Agreement (or any other agreement between the Company and such Director), without regard to any rights such Director may have against the Class A Members, and (iii) that it irrevocably waives, relinquishes and releases the Class A Members from any and all claims against the Class A Members for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Class A Members on behalf of any Director with respect to any claim for which such Director has sought indemnification from the Company shall affect the foregoing and the Class A Members shall 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 Director against the Company. The Directors shall be third party beneficiaries of this Agreement solely for purposes of this Section 7.7(e).

Section 7.8. Independent Director. A Majority-in-Interest of the Class A Members shall have the right to appoint an individual to the Board, who shall not be considered an "interested person" of the Company as such term is defined in the 1940 Act (such person, the "***Independent Director***").

ARTICLE VIII
TRANSFERS OF INTEREST BY MEMBERS

Section 8.1. General.

(a) No Member shall Transfer or permit the Transfer of all or a portion of its Units except in accordance with the terms and conditions set forth in this Article VIII. No Transfer shall be effective until such time as all requirements of this Article VIII in respect thereof have been satisfied. Any Transfer or purported Transfer of all or any part of a Member's Units or any interest therein not made in accordance with this Agreement (such Transfer, a "***Void Transfer***") shall be null and void and of no force or effect whatsoever. Any amounts otherwise distributable under Article IV or Article IX in respect of Units that have been the subject of a Void Transfer may be withheld by the Company until the Void Transfer has been rescinded, whereupon the amount withheld (after reduction by any damages suffered by the Company attributable to such Void Transfer) shall be distributed without interest.

(b) Conditions to and Requirements for Transfer. In addition to the other requirements of this Article VIII, no Transfer of all or any part of a Unit in the Company may be made unless the proposed Transfer satisfies the following conditions as determined by the Board, in its sole discretion, following advice of the Company's counsel if such advice is determined by the Board, in its sole discretion, to be appropriate:

(i) the Transfer will not violate the Securities Act or any other applicable federal, state, non-United States securities or "blue sky" laws, rules or regulations (including any investor suitability standards);

(ii) the Transfer will not cause the Company to be an investment company required to be registered under the 1940 Act;

(iii) the Transfer will neither cause any material adverse consequences to obtaining or holding the licenses or permits necessary for the business of the Company or any of the Subsidiaries nor cause any material increase in or additional filings, notification or other additional material disclosure by the Company or the Subsidiaries with respect thereto;

(iv) holders of equity or warrants, including any Transferee, of the Company will be restricted to those Persons who either (x) provide IRS Form W-9 or IRS Form W-8IMY (including underlying IRS Forms W-9 and W-8 of beneficial owners) or another applicable IRS Form W-8 establishing that it is not, as of the date it becomes a Member, subject to withholding of U.S. federal tax by the Company on distributions or allocations of income or (y) establish to the reasonable satisfaction of the Board of Directors that the provision of such forms would cause material expense or adverse consequences to the Member and agree that such Member will not be entitled to any gross-up or indemnity for, and will be required to fund, on demand of the Company, any such taxes relating to such Member payable by the Company in excess of the amount of any contemporaneous

distribution to such Member and the Board of Directors reasonably determines that such Member will be able to satisfy such obligation;

(v) the Transfer will not cause the Company to be required to register its equity interests under the Exchange Act;

(vi) the Transfer will not cause some or all of the assets of the Company to be "plan assets" or the investment activity of the Company to constitute "prohibited transactions" under ERISA or the Code;

(vii) the Transfer will not violate any "know your customer" (KYC) laws, rules or regulations; *provided*, *however*, that the Transferring Member will be given a reasonable opportunity to provide all necessary information for the proposed Transferee to satisfy KYC laws, rules and regulations; *provided*, *further*, that, despite being given such reasonable opportunity, if the Transferring Member is unable to provide such information, this requirement shall not be deemed satisfied until such information has been provided;

(viii) neither the proposed Transferee nor any of its Affiliates (A) is engaged in business that is competitive in any material respect with the Company or is otherwise listed on Schedule C, (B) is a customer of the Company or a counterparty to any contract with the Company or (C) is a member, partner, shareholder or other owner of a Person described in the foregoing clause A or clause B; and

(ix) neither the proposed Transferee nor any of its Affiliates (A) is organized under the Laws of, or has a place of business in, a country or territory that is designated as a "Non-Cooperative Jurisdiction" by the Financial Action Task Force on Money Laundering; (B) is a Sanctioned Person, or has a director, officer or greater-than-10 percent shareholder that is a Sanctioned Person; (C) is a Person whose ownership directly or indirectly of any Units would cause any other Person to be in violation of any Sanctions or Anti-Money Laundering Laws; and (D) is a Person that has been convicted of a violation of Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws.

(c) Member Arrangements; Proxies, etc. Except as specifically contemplated hereby or with the written consent of a Majority-in-Interest of the Class A Members, in no event shall the Minority Members grant any proxy or enter into or agree to be bound by any voting trust with respect to any Units, nor shall the Minority Members enter into any member agreements or arrangements of any kind with any Person with respect to any Units, including but not limited to, agreements or arrangements with respect to the voting of Units, nor shall the Minority Members act, for any reason, as a member of a group or in concert with each other or any other Persons in connection with the voting of Units.

(d) Consequences of Transfers Generally.

(i) Any successor or Transferee of Units (x) shall be subject to and bound by the terms of this Agreement, (y) shall assume all obligations of the

Transferor under this Agreement relating to the Units that are the subject of such Transfer and (z) shall deliver a joinder in the form attached as Exhibit A to this Agreement, dated as of the date of such Transfer.

(ii) No proposed Transferee shall be admitted to the Company as a Member unless such Transfer shall be made in compliance with this Article VIII. Unless a proposed Transferee is admitted as a Member under this Section 8.1(d), such proposed Transferee (A) shall have none of the powers of a Member hereunder and shall have only such rights of an assignee under the Act as are consistent with this Agreement and (B) shall have no right to obtain or require any information or account of Company transactions, or to inspect the Company's books or to vote on or consent to Company matters. No proposed Transferee of a Member's Units shall become a Member unless such Transfer shall be made in compliance with this Section 8.1.

(iii) The Transfer of a Member's Units and the admission of a Transferee shall not be cause for dissolution of the Company.

(iv) The Transferor and the Units that are the subject of a Transfer shall remain subject to this Agreement, and the Transferee shall hold such Units subject to all unperformed obligations of the Transferor.

(v) The Company shall reflect each Transfer and admission authorized under this Article VIII (including any terms and conditions imposed thereon by the Board) by updating the Member Register to reflect such Transfer or admission.

(vi) Each Member agrees that such Member will, upon request of the Company, execute such certificates or other documents and perform such acts as the Company deems appropriate prior to, on or after a Transfer of such Member's Units to preserve the limited liability of the Members under the laws of the jurisdictions in which the Company is doing business or otherwise.

(vii) Upon the death, disability, dissolution, resignation or resignation in contravention of Section 10.1, or the bankruptcy of a Member (the "***Withdrawing Member***"), the Company shall have the right to treat such Member's successor(s)-in-interest as assignee(s) of such Member's Units, with none of the powers of a Member hereunder and with only such rights of an assignee under the Act as are consistent with this Agreement. For purposes of this Section 8.1(d)(vii), if a Withdrawing Member's Units are held by more than one Person ("***Assignees***"), the Assignees shall appoint one Person with full authority to accept notices and distributions with respect to such Units on behalf of the Assignees and to bind them with respect to all matters in connection with the Company or this Agreement.

(viii) Upon request of the Company, each Member agrees to provide to the Company information regarding its adjusted tax basis in its Units along with documentation substantiating such amount, and any other information,

documentation and certifications necessary for the Company to comply with any applicable section of the Code and the Regulations thereunder.

(e) Additional Filings. Upon the admission of a Transferee under this Section 8.1, the Company shall cause to be executed, filed and recorded with the appropriate Governmental Authorities such documents as may be required to accomplish such substitution.

Section 8.2. Sale of the Company.

(a) Approved Sale. If a Majority-in-Interest of the Class A Members and the Board approve a sale of the Company, in a single transaction or a series of related transactions, to a purchaser pursuant to which (x) such purchaser proposes to acquire 50.1% or more of the outstanding Units (whether by merger, consolidation, recapitalization, reorganization, purchase of the outstanding Units or otherwise) or all or substantially all of the assets of the Company, and (y) all Members will receive (whether in such transaction or, with respect to an asset sale, upon a subsequent liquidation) their *pro rata* share of consideration at the same time and in the same form and amount of consideration per Unit as the Class A Members or, if any Member is given an option as to the form and amount of consideration to be received, all Members are given the same option; *provided*, *however*, in the event that any consideration that would be paid to Class A Members in connection with such Approved Sale is to be paid in a form other than cash, the Company may elect, in its sole discretion, to pay (or cause to be paid) to the holders of any non-Class A Units: (1) such holder's proportionate share of any such consideration, or (2) an amount in cash equal thereto, as determined the Board with reference to the value used by Ares Capital Corporation on its books and as reflected in its public filings, if applicable (such sale, an "***Approved Sale***"), each Member shall vote for, consent to and raise no objections against such Approved Sale and in connection therewith shall waive any claims related thereto, including claims relating to the fairness of the Approved Sale, the price paid for Units in such Approved Sale, the process or timing of the Approved Sale or any similar claims, regardless of the consideration being paid in such Approved Sale. If the Approved Sale is structured as a (i) merger or consolidation, each Member shall waive any dissenters' rights, appraisal rights or similar rights in connection with such merger or consolidation, (ii) sale of Units, each Member shall agree to sell all of such Member's Units or rights to acquire Units on the same terms and conditions approved and received by the Class A Members or (iii) sale of Company assets, each Member will, if applicable, vote in favor of such Approved Sale and any subsequent liquidation or other distribution of the proceeds therefrom on the same basis as approved by the Class A Members. The Company and each Member will take all necessary or desirable actions in furtherance of or in connection with the consummation of the Approved Sale as reasonably requested by a Majority-in-Interest of the Class A Members and/or the Board of Directors, including entering into agreements to effectuate the provisions of this Section 8.2, executing and delivering any applicable purchase agreement, merger agreement, indemnity agreement, escrow agreement, letter of transmittal or other agreements or documents governing or relating to such Approved Sale that the Company or a Majority-in-Interest of the Class A Members may reasonably request, pursuant to which all Members will agree to make the same customary representations as to ownership of their respective Units, power and authority to sell such Units as contemplated, and absence of conflicts with their respective obligations under the Sale Documents, and agree to the same customary covenants, indemnities and other terms and agreements on a several and not joint basis so long as the liabilities thereunder are borne on a *pro rata* basis based on the values of the Units of such Member being transferred in the Approved

Sale (the "***Sale Documents***"); *provided* that nothing contained herein shall require any Member to (A) provide indemnification in connection with any Approved Sale in excess of its *pro rata* share of the aggregate consideration payable to such Member in such Approved Sale, (B) make representations, warranties or covenants other than severally with respect to itself (and each Member shall only be required to make the customary representations set forth above), (C) in connection with being required to bear its proportionate share of any escrows, holdbacks or adjustments in respect of the purchase price or indemnification obligations, indemnify, other than severally (it being understood any holdback or escrow is deemed to be severally), any Person or Persons, and (D) agree to any non-competition, non-solicitation, no-hire or other similar restrictive covenants (other than confidentiality and non-use provisions that are no more restrictive than those set forth in this Agreement) in connection with such Approved Sale.

(b) Costs of an Approved Sale. Each Member will bear its *pro rata* share of the reasonable costs of such Approved Sale (including costs of securing a customary representation and warranty insurance policy in connection with such Approved Sale) to the extent such costs are incurred for the benefit of all Members and are not otherwise paid by the Company or the acquiring party, such that proceeds will be distributed pursuant to Section 4.1 after giving effect to such costs, as determined by the Board of Directors. For purposes of this Section 8.2(b), costs incurred in exercising reasonable efforts to take all actions in connection with the consummation of an Approved Sale in accordance with Section 8.2(a) shall be deemed to be for the benefit of all Members. Costs incurred by Members on their own behalf will not be considered costs of the transaction hereunder.

(c) Further Assurances. No Member shall (A) take any action that would, or would reasonably be expected to, materially delay, prevent, impede or interfere with the completion of any Approved Sale, (B) assert, to the extent that an advance waiver is permitted by applicable non-waivable law, at any time, any claim against the Company or any other Member (including any Class A Member) in connection with such Approved Sale or (C) *except* to the extent that it is required to be disclosed by any applicable Law or legal process or by the rules of any Governmental Authority, disclose to any Person (other than its Affiliates, and its and their respective officers, directors, employees, representatives and advisors) any information related to such Approved Sale (including the fact that discussions or negotiations are taking place concerning such Approved Sale, or any of the terms, conditions or other facts with respect to such Approved Sale).

(d) Approved Sale Closing Deliveries. At the closing of any Approved Sale, each Member shall deliver at such closing, against payment of the consideration therefor in accordance with the terms of the Sale Documents, certificates or other documentation (or other evidence thereof reasonably acceptable to the Transferee of such Units) representing its Units to be sold, duly endorsed for transfer or accompanied by duly endorsed stock or unit powers, and such other documents as are necessary to effectuate the proper Transfer of such Units on the books of the Company, free and clear of any Liens (other than Liens imposed by this Agreement, the Certificate or applicable law).

(e) Appointment of Seller Representative. In connection with any Approved Sale, unless otherwise determined by a Majority-in-Interest of the Class A Members, each Member will constitute and appoint one of the Class A Members, any of its Affiliates or other third party

as may be designated by a Majority-in-Interest of the Class A Members (the "***Seller Representative***") as his, her or its representative, agent and attorney-in-fact with full power of substitution to make all decisions and execute documents on behalf of such Member required to facilitate the consummation of the Approved Sale, the administration of and carrying out of the terms of agreements governing such Approved Sale, in each case in a manner such that all Members are treated substantially the same, including the power (i) to give and receive all notices and communications to be given or received under the terms of any Sale Documents and to receive service of process in connection with any claims under the Sale Documents; (ii) to make decisions on behalf of the Members with respect to the Approved Sale, including regarding (A) adjustments to the purchase price, (B) indemnification claims, (C) amendments to the Sale Documents and (D) the defense of third-party suits that may be the subject of indemnification claims, and to negotiate, enter into settlements and compromises of, and demand litigation or arbitration with respect to such third-party suits or claims by any purchaser for indemnification; and (iii) to receive funds, make payments of funds authorized by any affected Member, and give receipts for funds or to receive funds for the payment of expenses of the Members or to deposit such funds in such accounts as the Seller Representative deems necessary and apply such funds in payment for such expenses. The Seller Representative shall not be liable to any Member in its capacity as the Seller Representative for any liability of a Member or for any error of judgment, or any act done, taken or omitted by it in good faith or for any mistake in fact or law, or for anything which it may do or refrain from doing in connection with the agreements related to such Approved Sale, unless such action or failure to act constitutes fraud or willful misconduct on the part of the Seller Representative. The Members shall severally, but not jointly, *pro rata* in accordance with their respective proceeds from such Approved Sale, indemnify and hold harmless the Seller Representative from any and all losses, liabilities and expenses (including the reasonable fees and expenses of counsel) arising out of or related to the Seller Representative's service as the Seller Representative, *except* to the extent such losses, liabilities or expenses resulted from the Seller Representative's fraud or willful misconduct.

(f) Approved Sale Notice. The Class A Members may elect to give notice (the "***Approved Sale Notice***") to each of the other Members of any Approved Sale following the acceptance of an offer with respect to such Approved Sale. The Approved Sale Notice shall set forth the number of Units or assets proposed to be so acquired, the name of the acquiring Person, the proposed amount and form of consideration, and any other material terms and conditions of the offer. The Class A Members shall notify the other Members at least ten (10) Business Days in advance of the consummation of the Approved Sale. If the Approved Sale has not been consummated by the Approved Sale Outside Date (as defined below), the Class A Members must deliver another Approved Sale Notice in order to exercise their rights under this Section 8.2 with respect to any Approved Sale. For purposes of this Section 8.2, the "***Approved Sale Outside Date***" shall mean the date that is (i) one-hundred-eighty (180) days from the date of the Approved Sale Notice or (ii) if the Approved Sale has not been consummated within the time period specified in clause (i) solely because any regulatory approvals required for the consummation of the Approved Sale have not yet been obtained, then the earlier of (A) five (5) Business Days following the receipt of such required regulatory approvals or (B) three-hundred-sixty-five (365) days from the date of the Approved Sale Notice. If the Approved Sale is terminated prior to the consummation thereof, the Class A Members shall notify the other Members of such termination promptly, and in no event later than the fifth (5th) Business Day following such termination.

Section 8.3. Tag-Along Rights.

(a) Tag-Along Transaction. If any Member or Members who, individually or collectively with its Affiliates, holds 50.1% or more of the total issued and outstanding Class A Units of the Company (each, an "***Initiating Tag Holder***") shall propose to Transfer to a purchaser (which Transfer has been approved by the Board) (a "***Tag-Along Transaction***") any number of Class A Units held by such Initiating Tag Holder, the Initiating Tag Holder (or a designated representative acting on their behalf) shall deliver written notice (a "***Tag-Along Notice***") to the other Members (the "***Tag-Along Members***") and the Company, in accordance with Section 10.1, at least ten (10) Business Days prior to the consummation of such Tag-Along Transaction, offering the Tag-Along Members the opportunity to participate, on a *pro rata* basis (based on the relative ownership of Units held by the Initiating Tag Holder and all Tag-Along Members electing to sell Units in the Tag-Along Transaction), in such Tag-Along Transaction on the terms and conditions set forth in the Tag-Along Notice (which terms and conditions shall be the same as those terms and conditions applicable to the Initiating Tag Holder, *except* as to the number of Units proposed to be sold and such other changes made on account of the Tag-Along Members participating in the Tag-Along Transaction, *provided* that such changes do not adversely and disproportionately affect the Tag-Along Members as compared to the Initiating Tag Holder). The Tag-Along Notice shall contain a general description of the material terms and conditions of the Tag-Along Transaction, including the identity of the parties to the proposed Tag-Along Transaction, the total number of Units proposed to be sold and the proposed amount and form of consideration payable in connection therewith.

(b) Election to Participate. Each Tag-Along Member may, by written notice to the Initiating Tag Holders (or their designated representative) delivered within three (3) Business Days after delivery of the Tag-Along Notice to such Tag-Along Member (the "***Tag-Along Notice Period***"), elect to sell any or all of the Units held by such Tag-Along Member in such Tag-Along Transaction, on the terms and conditions set forth in the Tag-Along Notice; *provided*, *however*, that if such proposed Transferee desires to purchase a certain number of Units that is less than the aggregate number of Units proposed to be sold by the Initiating Tag Holders and any Tag-Along Members electing to sell Units held by such Tag-Along Member(s) in the Tag-Along Transaction, then each Initiating Tag Holder and each Tag-Along Member shall have the right to include its pro rata portion (based on the Percentage Interest held by the Initiating Tag Holders and all Tag-Along Members electing to sell Units in the Tag-Along Transaction as of the date of the Tag-Along Notice) of the Units to be Transferred to the proposed Transferee on the same terms and conditions as the Initiating Tag Holders in exchange for the pro rata portion of consideration to be received by the Initiating Tag Holders. Failure to respond within the Tag-Along Notice Period shall be regarded as a rejection of the offer made pursuant to the Tag-Along Notice and a waiver by such Tag-Along Member of its rights under this Section 8.3 only with respect to applicable Tag-Along Transaction.

(c) Further Assurances. In connection with any Tag-Along Transaction in which any Tag-Along Member elects to participate pursuant to this Section 8.3, each such Tag-Along Member will take all necessary or desirable actions reasonably requested by the Initiating Tag Holders and/or the Company 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 or other agreements or

documents governing or relating to such Tag-Along Transaction that the Company, the Initiating Tag Holders or the Transferee in such Tag-Along Transaction may reasonably request (collectively, such agreements, letter of transmittal or other agreements or documents, the "***Tag-Along Transaction Documents***"), pursuant to which such Initiating Tag Holder and Tag-Along Member shall agree to make the same customary representations as to ownership of their respective Units, power and authority to sell such Units as contemplated, and absence of conflicts with their respective obligations under the Sale Documents, and agree to the same customary covenants, indemnities and agreements on a several and not joint basis so long as the liabilities thereunder are borne on a pro rata basis based on the values of the Units of such Member being transferred in the Tag-Along Transaction, *provided* that nothing contained herein shall require any Member to (i) provide indemnification in connection with any Tag-Along Transaction in excess of its pro rata share of the aggregate consideration payable to such Member in such Tag-Along Transaction and (ii) indemnify, other than severally, any Person or Persons in connection with being required to bear its proportionate share of any escrows, holdbacks or adjustments in respect of the purchase price or indemnification obligations (it being understood any holdback or escrow is deemed to be severally), in connection with such Tag-Along Transaction. No Tag-Along Member shall (A) take any action that would materially delay, prevent, impede or interfere with the completion of any Tag-Along Transaction, (B) assert, to the extent that an advance waiver is permitted by applicable non-waivable law, at any time, any claim against the Company or any other Member (including any Initiating Tag Holder) in connection with such Tag-Along Transaction, or (C) *except* to the extent that it is required to be disclosed by any applicable Law or legal process or by the rules of any Governmental Authority, disclose to any Person (other than its Affiliates, and its and their respective officers, directors, employees, representatives and advisors) any information related to such Tag-Along Transaction (including 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). If requested by the Initiating Tag Holders, the Tag-Along Members shall constitute and appoint a Seller Representative in connection with the Tag-Along Transaction, in accordance with Section 8.2(e).

(d) Tag-Along Closing Deliveries. At the closing of any Tag-Along Transaction in which any Tag-Along Member has exercised its rights under this Section 8.3, such Tag-Along Member 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 Units) representing its Units to be sold, duly endorsed for Transfer or accompanied by duly endorsed stock powers, and such other documents necessary for the proper Transfer of such Units on the books of the Company, free and clear of any Liens (other than Liens imposed by this Agreement, the Certificate or applicable law).

(e) Costs of a Tag-Along Transaction. Each Initiating Tag Holder and each Tag-Along Member electing to participate in a Tag-Along Transaction will bear its pro rata share (based upon the relative number of Units to be sold by each such Person in such Tag-Along Transaction) of the costs and expenses of any such Tag-Along Transaction (including costs of securing a customary representation and warranty insurance policy in connection with such Tag-Along Transaction) to the extent such costs and expenses are incurred for the benefit of all such Members and are not otherwise paid by the Company or the Transferee. Costs and expenses

incurred by any such Tag-Along Member on its own behalf will not be considered costs of the Tag-Along Transaction and will be borne solely by such Member.

(f) Breach of Tag-Along Obligations. If any Tag-Along Member electing to participate in a Tag-Along Transaction breaches any of its obligations under this Section 8.3 or under any of the Tag-Along Transaction Documents, then such Tag-Along Member will not be permitted to participate in such Tag-Along Transaction and the Initiating Tag Holders can proceed to close such Tag-Along Transaction excluding the sale of such Tag-Along Member's Units therefrom.

(g) Exclusion of Debt Transactions. In no event shall any Tag-Along Member have any rights under this Section 8.3 or otherwise with respect to a sale or other transaction by any Initiating Tag Holders with respect to any debt securities or other indebtedness of the Company.

(h) Outside Date. For purposes of this Section 8.3, "***Tag-Along Outside Date***" shall mean the date that is (i) one-hundred-eighty (180) days from the date of the Tag-Along Notice or (ii) if the Tag-Along Transaction has not been consummated within the time period specified in clause (i) solely because any regulatory approvals required for the consummation of the Tag-Along Transaction have not yet been obtained, then the earlier of (A) five (5) Business Days following the receipt of such required regulatory approvals or (B) three-hundred-sixty-five (365) days from the date of the Tag-Along Notice. If the Tag-Along Transaction has not been consummated by the Tag-Along Outside Date, the Initiating Tag Holder must deliver another Tag-Along Notice in order to exercise their rights under this Section 8.3 with respect to any Tag-Along Transaction. If the Tag-Along Transaction is terminated prior to the consummation thereof, the Initiating Tag Holders shall notify the Tag-Along Members of such termination promptly, and in no event later than the fifth (5th) Business Day following such termination.

Section 8.4. Right of First Offer.

(a) Subject to the other provisions of this Article VIII, in the event that any Minority Member proposes to Transfer any or all Class A Units held by it to any Person, other than to another Member or a Permitted Transferee, in one transaction or series of related transactions, then such Minority Member (a "***Selling Holder***") shall, prior to the execution of such Transfer of Units, deliver to the Class A Members a written notice (a "***ROFO Notice***") containing the following information:

(i) The number of Units that the Selling Holder desires to sell (the "***ROFO Units***");

(ii) The price at which the Selling Holder proposes to sell such ROFO Units (the "***Offer Price***") and, in reasonable detail, the terms of payment and all other terms and conditions of such offer;

(iii) A list of the Persons to whom the Selling Holder intends to offer the Units; and

(iv) The proposed closing date for the transaction, which shall be not less than forty-five (45) calendar days or more than seventy-five (75) calendar days (the "***ROFO Outside Date***") after the date of delivery of the ROFO Notice.

(b) The ROFO Notice shall constitute an irrevocable offer by the Selling Holder to sell to the Class A Members the ROFO Units at the price and on the terms set forth in the ROFO Notice. The Class A Members may elect to purchase, by written notice (a "***ROFO Exercise Notice***") to the Selling Holder at any time during the thirty (30) calendar days following their receipt of the ROFO Notice, all (but not less than all) of the ROFO Units for cash at the price and upon the terms and conditions set forth in the ROFO Notice. In such case, the consummation of the purchase must be consummated on or prior to the ROFO Outside Date. If no Class A Member submits a ROFO Exercise Notice within thirty (30) calendar days of receipt of the ROFO Notice, then the Selling Holder shall be permitted to sell such ROFO Units to a third-party prospective purchaser for at least 98% of the Offer Price and otherwise on the same terms (other than *de minimis* changes) as those set forth in the ROFO Notice on or prior to the ROFO Outside Date; *provided*, that such third-part prospective purchaser must have been listed in the ROFO Notice required under Section 8.4(a)(iii).

(c) In the event that the Selling Holder has not sold the ROFO Units prior to or as of the ROFO Outside Date in accordance with the terms of this Section 8.4, then the Selling Holder shall not thereafter be permitted to sell any Units without first repeating the foregoing procedures.

Section 8.5. Effect of Transfer. Any Member who shall Transfer any Units or other interest in the Company shall cease to be a Member of the Company in respect of such Units or other interest in the Company and shall no longer have any rights or privileges of a Member in respect of such Units or other interest. Any Person who acquires in any manner whatsoever any Units or other interest in the Company, irrespective of whether such Person has accepted and adopted in writing the terms and provisions of this Agreement, shall be deemed by the acceptance of the benefits of the acquisition thereof to have agreed to be subject to and bound by all of the terms and conditions of this Agreement that any predecessor in such Units was subject to or by which such predecessor was bound as if originally a party to this Agreement.

Section 8.6. Other Transfer Requirements.

(a) Delivery of Joinders. Except as otherwise approved in writing by the Board of Directors, each Transferee of Units or other interests in the Company shall, as a condition precedent to the effectiveness of such Transfer, execute a joinder to this Agreement in the form of Exhibit A pursuant to which such Transferee shall agree to be bound by the provisions of this Agreement and the other applicable Transaction Documents.

(b) Legal Opinion. No Transfer of Units or other interest in the Company may be made unless in the opinion of counsel, satisfactory in form and substance to the Board of Directors (which opinion requirement (x) may be fulfilled by an opinion issued by in-house counsel of any Member that is a fund or (y) may be waived by the Board of Directors or a Majority-in-Interest of the Class A Members), such Transfer would not violate the provisions of

Sections 8.1(b)(i), 8.1(b)(ii), 8.1(b)(iv), and 8.1(b)(v). Such opinion of counsel shall be delivered in writing to the Company prior to the date of the Transfer.

Section 8.7. Transfer Fees and Expenses. Except as expressly provided herein, the Transferor and Transferee of any Units or other interest in the Company shall be severally and not jointly obligated to reimburse the Company for all reasonable expenses (including attorneys' fees and expenses) of any Transfer or proposed Transfer, whether or not consummated.

Section 8.8. Void Transfers. Any Transfer by any Member of any Units or other interest in the Company in contravention of this Agreement (including the failure of the Transferee to execute a joinder in accordance with Section 8.6(a)) or any other Transaction Document shall be void and ineffectual and shall not bind or be recognized by the Company or any other party hereto. The Company shall not record such Transfer on its books or treat any purported Transferee of such Units or other interest in the Company as the owner of such securities for any purpose. No purported assignee shall have any right to any distributions of the Company unless otherwise approved in writing by the Board of Directors.

Section 8.9. No Circumvention of Unit Transfer Restrictions.

(a) Each Member agrees that the Transfer restrictions in this Agreement may not be purposefully avoided by the holding of Units directly or indirectly through a Person that can itself be sold in order to dispose of an interest in Units free of such restrictions or otherwise. Any Transfer of any Units (or other interest) resulting in any change in the control, directly or indirectly, of a Member or of any other Person having control, directly or indirectly, over such Member (unless such change in control results in control of the applicable Person being transferred to a Permitted Transferee of such Person or of the Member), shall be treated as being a Transfer of the Units held by such Member, and the provisions of this Agreement that apply in respect of the Transfer of Units shall thereupon apply in respect of the Units so held.

(b) Notwithstanding anything to the contrary herein, if any Member is an entity that was formed solely for the purpose of acquiring and/or holding Units or any other Company Interests or that has no substantial assets other than Units or any other Company Interests, such Member agrees that its common stock, membership interests, partnership interests or other equity interests (and common stock, membership interests, partnership interests or other equity interests in any similar entities controlling such Member) (the "***HoldCo Equity***"), if certificated, will note the restrictions contained in this Article VIII, and the operating agreement or similar agreement governing the transfer of such HoldCo Equity will include a covenant of the equityholders of such Member not to transfer the HoldCo Equity in a manner inconsistent with or that seeks to avoid the restrictions contained in this Article VIII.

Section 8.10. Holdback Agreement. No Member shall effect any Transfer or distribution of any Units or of any other Units during the seven days prior to, and the 180-day period beginning on, the effective date of the initial Public Offering (and the 90-day period beginning on the effective date of any other underwritten Public Offering), *except* as part of such underwritten Public Offering or unless otherwise permitted by the Board of Directors or the Class A Members.

Section 8.11. Reorganization of the Company; Public Offering.

(a) The Board may, in order to facilitate a Public Offering, or for other reasons that the Board deems to be in the best interests of the Company and/or its Members, cause the Company to incorporate its business, or any portion thereof or reorganize its business into a different type of entity (*e.g.*, foreign or domestic limited partnership or similar type of entity), *provided* that each Member is treated fairly and equitably and in the same manner as all other Members with respect to such reorganization by (i) the Transfer of all of the assets of the Company, subject to the Company's liabilities, or the transfer of any portion of such assets and liabilities, to one or more entities in exchange for shares (or similar ownership interests) of such entity or entities and the subsequent distribution of such shares (or similar ownership interests), at such time as the Board may determine, to the Members on a *pro rata* basis, (ii) conversion of the Company into a corporation pursuant to §18-216 of the Act (or any successor section thereto) or conversion of the Company into another entity, (iii) Transfer by each Member of Units held by such Member to one or more entities in exchange for shares (or similar ownership interests) of such entity or entities (including by merger of the Company into a corporation) or (iv) causing an entity to be admitted as a Member of the Company, with such entity purchasing Units in the Company from the Company or the Members (as determined by the Board) with the proceeds of a Public Offering of the entity's stock (or similar ownership interests) and, in connection therewith, each Member agrees to the Transfer of its Units in accordance with the terms of exchange as provided by the Board and further agrees that as of the effective date of such exchange any Unit outstanding thereafter which shall not have been tendered for exchange shall represent only the right to receive a certificate representing the number of shares (or similar ownership interests) of such entity or entities as provided in the terms of such exchange.

(b) In connection with any such reorganization or exchange as provided in this Section 8.11, the Board may determine what securities or other property the Units will be converted to or exchanged for in such reorganization or exchange; *provided* that each Member shall receive the same form of securities and/or other property and the same amount of securities and/or other property per Unit and if any holders of non-Class A Units are given an option as to the form and amount of securities to be received, each other holder of non-Class A Units shall be given the same option.

(c) The Company shall pay any and all organizational, legal and accounting expenses and filing fees incurred in connection with such reorganization transaction, *provided* that each Member shall pay its own fees related to a filing under the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976, as amended, if applicable. It is the intent of the Members that the conversion of the Company into corporate or other entity form and the conversion or reorganization of any of the Company's operating divisions, whether currently existing or existing in the future, into corporate or other entity form are part of the Members' original investment decision in respect of the Units of the Members. In connection with any such reorganization or change, no Member shall have the right or power to veto, vote for or against, amend, modify or delay any such reorganization or exchange. Further, each Member shall execute and deliver any documents and instruments and perform any additional acts that may be necessary or appropriate, as determined by the Board, to effectuate and perform any such reorganization or change.

(d) In the event that the Board or a Majority-in-Interest of the Class A Members approves an initial Public Offering, the Members shall take all necessary or desirable actions reasonably requested by the Board or a Majority-in-Interest of the Class A Members in connection with the consummation of such Public Offering, including consenting to, voting for and waiving any dissenters rights, appraisal rights or similar rights with respect to any reorganization or recapitalization of the Company pursuant to the terms of this Section 8.11 and compliance with the requirements of all laws and regulatory bodies that are applicable or that have jurisdiction over such Public Offering. In the event that such Public Offering is an underwritten offering and the managing underwriters advise the Company in writing that in their opinion the Company's capital structure would adversely affect the marketability of the offering, each holder of Units shall consent to and vote for a recapitalization, reorganization or exchange (each, a "***Recapitalization***") of any Units into Securities that the managing underwriters, the Board and a Majority-in-Interest of the Class A Members find acceptable and shall take all necessary and desirable actions in connection with the consummation of such Recapitalization; *provided* that each Member shall receive the same type of security with the same value per Unit (other than differences based upon differences in the amount of yield accrued on such Units since their respective dates of issuance).

(e) Subject to the provisions of this Agreement, the Company may, with the approval of the Board and without the need for any further act, vote or approval of any Member or class or group of Members, merge with, or consolidate into, another limited liability company (organized under the laws of Delaware or any other state), a corporation (organized under the laws of Delaware or any other state) or other business entity (as defined in Section 18-209(a) of the Act), regardless of whether the Company or such other entity is the survivor. If a merger is used as a means of effecting the intent of Section 8.11(a) of this Agreement, then the provisions of that Section shall instead apply to such transaction. Section 18-210 of the Act (entitled "Contractual Appraisal Rights") shall not apply or be incorporated into this Agreement and the Members hereby waive any rights under such section of the Act.

Section 8.12. Piggyback Registration Rights.

(a) Subject to the terms of this Agreement, if the Company at any time proposes for any reason to register any of its Units, either for its own account or the account of a Member, on a form that would be suitable for registration involving Units (except with respect to registration statements on Form S-4 or Form S-8 promulgated under the Securities Act or any comparable or successor forms thereto), the Company will (i) promptly give each Member written notice of such proposed registration and (ii) subject to Section 8.12(b), include in such registration, and in any underwriting involved therein, all the Units specified in a written request delivered to the Company by any such Member within thirty (30) days after the Company delivers such written notice.

(b) In the event the underwriter's representative advises, in writing, the Company and Members seeking registration pursuant to this Section 8.12 that market factors (including the aggregate number of Units requested to be registered in such registration, the general condition of the market and the status of the Persons proposing to sell securities pursuant to the registration), require a limitation of the number of Units to be underwritten, the underwriter's representative (subject to the allocation priority in Section 8.12(c) below) may:

(i) in the case of an initial Public Offering, exclude some or all of the Units from such registration and underwriting in the manner set forth in Section 8.12(c); and

(ii) in the case of any registration subsequent to an initial Public Offering: (A) limit the number of Units requested to be included in such registration and underwriting as advised by the underwriter's representative in such registration; and (B) limit the number of Units requested to be included in such registration and underwriting to not less than [●]% of all securities included in such registration;

provided, that, in the event the underwriter's representative requires a limitation of the number of Units to be underwritten, such limitation shall first apply to the Units to be included in such registration that are not registrable, and, if after the application of such limitation, the underwriter's representative further requires a limitation of the number of Units to be underwritten then such limitation shall apply to the Units that are registrable.

(c) In the event that the underwriter's representative limits the number of Units to be included in a registration statement pursuant to Section 8.12(b), the number of Units that may be included in such registration and underwriting shall be included, subject to Section 8.12(b), in the following order: (i) *first* the Class A Units, *pro rata* among the Class A Members thereof based upon the number of Class A Units requested to be registered by each such Class A Member, and (ii) *second*, any other Units *pro rata* among the Members thereof based upon the number of Units requested to be registered by each such Member.

ARTICLE IX
RESIGNATION OF MEMBERS; TERMINATION OF COMPANY; LIQUIDATION AND DISTRIBUTION OF ASSETS

Section 9.1. Resignation of Members. Except as otherwise specifically permitted in this Agreement, a Member may not resign or withdraw from the Company unless approved by the Board (or if the Board of Directors shall have resigned, a Majority-in-Interest of the Class A Members). The Board of Directors (or, if the Board of Directors shall have resigned, a Majority-in-Interest of the Class A Members) shall reflect any such resignation or withdrawal by preparing an amendment to this Agreement, dated as of the date of such resignation or withdrawal, and the resigning or Withdrawing Member (or such Member's successors-in-interest) shall have none of the powers of a Member hereunder and shall only have such rights of an assignee of a limited liability company interest under the Act as are consistent with the other terms and provisions of this Agreement and with no other rights under this Agreement. Any Member resigning or withdrawing in contravention of this Section 9.1 shall indemnify, defend and hold harmless the Company, the Board of Directors and all other Members from and against any losses, expenses, judgments, fines, settlements or damages suffered or incurred by the Company or any such other Member arising out of or resulting from such resignation or withdrawal.

Section 9.2. Dissolution of Company.

(a) The Company shall be dissolved, wound up and terminated as provided herein upon the first to occur of the following:

(i) a decree of dissolution of the Court of Chancery of the State of Delaware pursuant to Section 18-802 of the Act;

(ii) the determination of the Board of Directors to dissolve the Company; or

(iii) the occurrence of any other event that would make it unlawful for the business of the Company to be continued.

Except as expressly provided herein or as otherwise required by the Act, the Members shall have no power to dissolve the Company.

(b) In the event of the dissolution of the Company for any reason, the Board of Directors or a liquidating agent or committee appointed by the Board of Directors shall act as a liquidating agent (the Board of Directors or such liquidating agent or committee, in such capacity, is hereinafter referred to as the "***Liquidator***") and shall commence to wind up the affairs of the Company and to liquidate the Company assets. The Members shall continue to share all income, losses and distributions during the period of liquidation in accordance with Article IV. The Liquidator shall have full right and unlimited discretion to determine the time, manner and terms of any sale or sales of Company assets pursuant to such liquidation, giving due regard to the activity and condition of the relevant market and general financial and economic conditions, *provided* that the Liquidator shall be bound in all respects by the implied covenant of good faith and fair dealing.

(c) The Liquidator shall have all of the rights and powers with respect to the assets and liabilities of the Company in connection with the liquidation and termination of the Company that the Board of Directors would have with respect to the assets and liabilities of the Company during the term of the Company, and the Liquidator is hereby expressly authorized and empowered to execute any and all documents necessary or desirable to effectuate the liquidation and termination of the Company and the Transfer of any Company assets, *provided* that the Liquidator shall be bound in all respects by the implied covenant of good faith and fair dealing.

(d) Notwithstanding the foregoing, a Liquidator which is not a Member shall not be deemed a Member and shall not have any of the economic interests in the Company of a Member; and such Liquidator shall be compensated for its services to the Company at normal, customary and competitive rates for its services to the Company, as reasonably determined by the Board of Directors.

Section 9.3. Distribution in Liquidation. The Company's assets shall be applied in the following order of priority:

(a) *first*, to pay the costs and expenses of the winding up, liquidation and termination of the Company;

(b) *second*, to creditors of the Company, in the order of priority provided by law; and

(c) *third*, the remainder to the Members in accordance with Section 4.1.

provided, that if the Liquidator, in its reasonable discretion, acting in good faith, determines that Company assets other than cash are to be distributed, then the Liquidator shall cause the Value of the assets not so liquidated to be determined (with any such determination normally made by the Board of Directors in accordance with the definition of "Value" being made instead by the Liquidator). Such assets shall be retained or distributed by the Liquidator as follows:

(i) the Liquidator shall retain assets having a value, net of any liability related thereto, equal to the amount by which the cash net proceeds of liquidated assets are insufficient to satisfy the requirements of clauses (a) and (b) of this Section 9.3; and

(ii) the remaining assets shall be distributed to the Members in the manner specified in clause (c) of this Section 9.3.

(d) If the Liquidator, in its reasonable discretion, acting in good faith, deems it not feasible or desirable to distribute to each Member its allocable share of each asset, the Liquidator may allocate and distribute specific assets to one or more Members as the Liquidator shall reasonably determine to be fair and equitable, taking into consideration, *inter alia*, the Value of such assets and the tax consequences of the proposed distribution upon each of the Members (including both distributees and others, if any). Any distributions in-kind shall be subject to such conditions relating to the disposition and management thereof as the Liquidator deems reasonable and equitable.

Section 9.4. Rights of Members. Each Member shall look solely to the Company's assets for all distributions with respect to the Company and such Member's Capital Contribution (including return thereof), and such Member's share of profits or losses thereon, and shall have no recourse therefor (upon dissolution or otherwise) against any other Member or the Board of Directors, *except* in the case of fraud on the part of a Member, the Board or any Director. No Member shall have any right to demand or receive property other than cash upon dissolution and termination of the Company.

Section 9.5. Termination. The Company shall terminate when all property owned by the Company shall have been disposed of and the assets shall have been distributed as provided in Section 9.3. The Liquidator shall then execute and cause to be filed a Certificate of Cancellation of the Company with the Secretary of State of the State of Delaware.

ARTICLE X
NOTICES; VOTING; INFORMATION RIGHTS

Section 10.1. Notices.

(a) All notices, requests, demands, claims and other communications provided for under this Agreement shall be in writing. Any notice, request, demand, claim or other

communication hereunder shall be sent by (i) personal delivery (including receipted courier service) or overnight delivery service to the intended recipient at the address set forth below, (ii) facsimile or electronic mail to the facsimile number or email address of the intended recipient set forth below (*provided* that a copy is also sent by another permitted method), (iii) nationally recognized overnight delivery courier service to the intended recipient at the address set forth below or (iv) registered or certified mail, return receipt requested, postage prepaid, to the intended recipient at the address set forth below:

(i) If to the Company, at its principal place of business indicated herein, or at such other address as the Company may hereafter designate by written notice to the Members, with a copy (which shall not constitute notice) to:

V SandCo, LLC
Attn: [●]
[●]
[●], [●] [●]
Phone: [●]
Email: [●]

(ii) If to any Class A Member, to such Class A Member at its address set forth on the books and records of the Company, or at such other address as such Class A Member may hereafter designate by written notice to the Company, in each case, with a copy (which shall not constitute notice) to:

Ares Capital Corporation
245 Park Avenue, 44th Floor,
New York, New York 10167
Attn: General Counsel
Facsimile No. (212) 750-1777
E-mail: arccgeneralcounsel@aresmgmt.com

and

Ares Capital Corporation
200 Crescent Court, Ste. 1425
Dallas, TX 75201
Attn: Owen Hill; Joseph Allio
Phone: (214) 302-0088; (214) 302-0109
Email: ohill@aresmgmt.com; jallio@aresmgmt.com

and

Sidley Austin LLP
Attn: Marc Rose
2021 McKinney Avenue, Suite 2000
Dallas, TX 75201

Phone: (214) 981-3408
Email: mrose@sidley.com

and

Sidley Austin LLP
Attn: Herschel Hamner
1000 Louisiana Street, Suite 5900
Houston, TX 77002
Phone: (713) 495-4513
Email: hhamner@sidley.com

(iii) If to any other Member, to such Member at its address set forth on the books and records of the Company, or at such other address as such Member may hereafter designate by written notice to the Company.

(b) Notices shall be deemed to have been received: (i) if given by personal delivery or by electronic mail, on the day given, if given before 5:00 p.m. local time on a Business Day in the jurisdiction of the intended recipient; otherwise on the next Business Day, *provided* that receipt of any electronic mail is confirmed by written evidence of delivery of electronic mail or written acknowledgment of receipt thereof by the recipient; (ii) if given by nationally recognized overnight delivery courier service, on the date of delivery indicated in the records of such courier service; and (iii) if given by registered or certified mail, return receipt requested, postage prepaid, on the date of delivery indicated on the return receipt.

Section 10.2. Voting. Any action requiring the affirmative vote of a Supermajority-in-Interest or a Majority-in-Interest of the Class A Members under this Agreement, unless otherwise specified herein, may be taken by vote at a meeting or, in lieu thereof, by written consent of a Supermajority-in-Interest or a Majority-in-Interest of the Class A Members, as applicable. Except as otherwise required by law, an owner of Units entitled to vote may vote any portion of the Units in any manner (e.g., for, against or abstain) the Member chooses. If a Member votes without designating the number or proportion of Units voted in a particular manner, the Member shall be deemed to have voted all of the Units in that way.

ARTICLE XI
AMENDMENT OF AGREEMENT

Section 11.1. Amendments. Subject to Sections 3.1(c), 6.6 and 11.2, amendments to this Agreement may be made only if embodied in an instrument signed by the Class A Members holding more than 50% of all Class A Units issued and outstanding at such time. The Company shall, promptly following the effectiveness of any amendment, send to each Member a copy of such amendment to this Agreement.

Section 11.2. Amendments by the Board. The Board, without the consent or approval at any time of any Member (each Member, by acquiring its Units, being deemed to consent to any such amendment), may amend any provision of this Agreement, and may execute, swear to, acknowledge, deliver, file and record all documents required or desirable in connection therewith, to reflect:

(a) Change in Name or Location. A change in the name of the Company or the location of the principal business of the Company.

(b) Change in Members. The admission, dilution, substitution, termination or withdrawal of any Member in accordance with the provisions of this Agreement.

(c) Issuance of Units. The issuance of any class or series of Units or other interests in the Company and the related rights and preferences thereof in accordance with Section 3.1(c) (subject to Section 6.4).

(d) Qualification to do Business. A change that is necessary to qualify the Company as a limited liability company or a company in which the Members have limited liability.

(e) Changes which are Inconsequential, Curative or Required. A change that is:

(i) of an inconsequential nature and does not adversely affect any Member in any material respect;

(ii) necessary or desirable to cure any ambiguity or to correct or supplement any immaterial provisions of this Agreement; or

(iii) necessary to reflect the current Capital Contributions and number of Units held by each Member on the Member Register, following any change to such items in accordance with the provisions of this Agreement.

(f) Changes Under Applicable Law. A change in any provision of this Agreement which requires any action to be taken by or on behalf of the Board or the Company pursuant to the requirements of the Act or any other applicable law if the provisions of applicable law are amended, modified, or revoked so that the taking of such action is no longer required. The authority set forth in this Section 11.2(f) shall specifically include the authority to make such amendments to this Agreement and to the Certificate as the Board deems necessary or desirable in the event that the Act or any other applicable law is amended or eliminate or change any provision now in effect.

Section 11.3. Amendment of Certificate. In the event that this Agreement shall be amended pursuant to this Article XI, the Board of Directors shall amend the Certificate to reflect such change if the Board of Directors deems such amendment of the Certificate to be necessary.

ARTICLE XII
MISCELLANEOUS

Section 12.1. Confidentiality. Each party hereto agrees that, *except* with the prior written consent of the Board of Directors, it shall at all times keep confidential and not divulge, furnish or make accessible to anyone any confidential information, knowledge or data concerning or relating to the business or financial affairs of the Company or any direct or indirect Subsidiary to which such party has been or shall become privy by reason of this Agreement, discussions or negotiations relating to this Agreement or the relationship of the parties contemplated hereby; *provided*,

however, that (a) confidential information may be disclosed by a party, on a need-to-know basis, to a party's directors, partners, officers, employees, agents, members, managers, attorneys, advisors or representatives, or representatives of any of the foregoing (the "***Representatives***") and, (b) subject to the terms of a non-disclosure agreement or equivalent confidentiality agreement, to bona fide financing sources and bona fide prospective Transferees of such party's Units (together with the Representatives, the "***Permitted Recipients***") (*provided* that (1) the Permitted Recipients of any party will be informed by such party of the confidential nature of such information and shall be directed by such party to keep such information confidential in accordance with the contents of this Agreement and (2) each party will be liable for any breaches of this Section 12.1 by any of its Permitted Recipients). The confidentiality obligations of this Section 12.1 do not apply to any information, knowledge or data (i) which is publicly available or becomes publicly available through no act or omission of the party wishing to disclose the information, knowledge or data; (ii) which is independently developed by such party without reliance on such confidential information, knowledge or data; and (iii) to the extent that it is required to be disclosed by any applicable Law, regulation or legal process or by the rules of any stock exchange, regulatory body or Governmental Authority. The provisions of this Section 12.1 shall survive termination of this Agreement. Notwithstanding the foregoing, in the case of a Member owned, directly or indirectly, by one or more funds or other pooled investment vehicles, such Member shall be entitled to disclose such confidential information to investors and limited partners of such fund or pooled investment vehicle, *provided* such disclosures are made to Persons subject to an obligation of confidentiality with respect to such information, which obligation of confidentiality shall be no less restrictive than the obligation of confidentiality such Persons owe to their respective investors.

Section 12.2. Each Company Membership Interest is a Security. The Company and each Member expressly acknowledge and agree that each Unit shall constitute a "security" within the meaning of, and be governed by, (i) Article 8 of the Uniform Commercial Code (the "***UCC***") (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Delaware, and (ii) Article 8 of the UCC of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995, and the Company hereby "opts-in" to such provisions for the purpose of the UCC. Notwithstanding any provision of this Agreement to the contrary, to the extent that any provision of this Agreement is inconsistent with any non-waivable provision of Article 8 of the UCC as in effect in the State of Delaware (6 Del C. § 8-101, et. seq.) such provision of Article 8 of the UCC shall be controlling.

Section 12.3. Offset. Whenever the Company is to pay or distribute any amount to any Member, any amounts that such Member or its Affiliate owes (or will upon receipt of such payment or distribution owe) the Company or any of its Subsidiaries pursuant to this Agreement, another Transaction Document to which such Member is a party or any other agreement between the Company or any of its Subsidiaries, on the one hand, and such Member, on the other hand, may be deducted from the amount to be paid or distributed to such Member before payment or distribution in satisfaction of the portion of any such amount owed (or to be owed).

Section 12.4. Remedies. Each Member shall have all rights and remedies set forth in this Agreement and all rights and remedies which such Persons has been granted at any time under any other agreement or contract and all of the rights which such Person has under any Law. Any

Person having any rights under any provision of this Agreement or any other agreements contemplated hereby shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by Law. All remedies, either under this Agreement or by Law or otherwise afforded to any party, shall be cumulative and not alternative.

Section 12.5. Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof. It supersedes any prior agreement or understandings among them with respect to the subject matter hereof, and it may not be modified or amended in any manner other than as set forth herein.

Section 12.6. Waiver. No failure by any party to insist upon the strict performance of any provisions of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

Section 12.7. Governing Law; Jurisdiction; Venue; Service of Process. This Agreement and the rights of the parties hereunder will be governed by, and construed in accordance with, the laws of the state of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof. In any action between any of the parties arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement: (a) each of the parties irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Court of Chancery of the State of Delaware and, in the event that only federal courts have jurisdiction, the United States Federal District Court of the District of Delaware and agrees that process may be served upon it in any manner authorized by the laws of the state of Delaware or the District of Delaware, as applicable, for such Persons and waives and covenants not to assert or plead any objection which it might otherwise have to such jurisdiction and such process; (b) if any such action is commenced in a state court other than in Delaware, then, subject to applicable law, no party will object to the removal of such action to Delaware, if possible, and if removal to Delaware is not available, to any federal court located in the District of Delaware; (c) each of the parties irrevocably waives the right to trial by jury in connection with any matter based upon or arising out of this Agreement or the transactions contemplated hereby; and (d) each of the parties agrees that service of any process, summons, notice or document pursuant to Section 10.1 shall be effective service of process in any action, suit or proceeding in Delaware with respect to any matters to which it has submitted to jurisdiction as set forth above in this paragraph.

Section 12.8. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced as a result of any rule of law or public policy, all other terms and other provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated by this Agreement are fulfilled to the greatest extent possible.

Section 12.9. Effect. Except as herein otherwise specifically provided, this Agreement shall be binding upon and inure to the benefit of the parties and their legal representatives, successors and permitted assigns.

Section 12.10. Captions. Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this Agreement or any provision hereof.

Section 12.11. Further Action. The parties shall execute and deliver all documents, provide all information and take or refrain from taking such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 12.12. Counterparts. This Agreement may contain more than one counterpart of the signature page and this Agreement may be executed by the affixing of the signatures of each of the Members to one of such counterpart signature pages. All of such counterpart signatures pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

Section 12.13. Waiver of Partition. The Members hereby agree that the Company assets are not and will not be suitable for partition. Accordingly, each of the Members hereby irrevocably waives any and all rights (if any) that such Member may have to maintain any action for partition of any of such assets.

Section 12.14. Specific Performance. The parties acknowledge and agree that the Company would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each Member agrees that the Company shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions of this Agreement in any action instituted in any court of the United States or any State thereof having jurisdiction over the parties hereto and the matter, in addition to any other remedy to which the Company may be entitled, at law or in equity.

Section 12.15. Survival. Article II (Definitions), Section 6.2 (Liability), Section 6.3 (Fiduciary Duties; Investment Opportunities and Conflicts of Interest), Section 7.6 (Standard of Board and Director Actions), Section 7.7 (Indemnification), Section 10.1 (Notices) and this Article XII (Miscellaneous) shall survive and continue in full force in accordance with its terms notwithstanding any termination of this Agreement or the dissolution of the Company.

Section 12.16. Non-Recourse. This Agreement may only be enforced against, and any claim based upon, arising out of, or related to this Agreement or the negotiation, execution or performance of this Agreement may only be brought against, the Persons that are expressly named as parties hereto and then only with respect to the specific obligations set forth herein with respect to such party. For further clarity, no past, present or future director, manager, officer, employee, incorporator, manager, member, partner, stockholder, Affiliate, agent, attorney or other representative (in each case, in their capacities as such) of any party hereto or of any Affiliate of any party hereto, or any of their successors or permitted assigns, shall have any liability for any

obligations or liabilities of any party hereto under this Agreement or for any claim based on, in respect of or by reason of the transactions contemplated hereby.

Section 12.17. Certain Acknowledgments. Upon execution and delivery of a counterpart to this Agreement or a joinder to this Agreement, each Member shall be deemed to acknowledge to Ares as follows: (a) Ares has retained Sidley Austin LLP in connection with the transactions contemplated hereby and expect to retain Sidley Austin LLP as legal counsel in connection with the management and operation of the investment in the Company and its Subsidiaries, (b) Sidley Austin LLP is not representing and will not represent any other Member (other than Ares) in connection with the transactions contemplated hereby or any dispute which may arise between Ares, on the one hand, and any other Member, on the other hand and (c) such Member will, if it wishes counsel on the transactions contemplated hereby, retain its own independent counsel.

Section 12.18. Termination. This Agreement will terminate upon the earlier to occur of: (a) the closing of a Public Offering; and (b) the date of consummation of an Approved Sale of 100% of the issued and outstanding equity interests of the Company.

[*Remainder of page left blank intentionally*]

DATED AS OF: _____, 2020

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT OF
V SANDCO, LLC

IN WITNESS WHEREOF, the undersigned has caused this counterpart signature page to the Amended and Restated Limited Liability Company Agreement of V SandCo, LLC, dated as of [●], 2020, to be duly executed as of the date first above written.

V SANDCO, LLC

By:_____
Name:_____
Title:_____

Address for Notices:

[●]
[●]
[●]

Attn: [●]

Phone: [●]

Email: [●]

DATED AS OF: _____, 2020

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT OF
V SANDCO, LLC

IN WITNESS WHEREOF, the undersigned has caused this counterpart signature page to the Amended and Restated Limited Liability Company Agreement of V SandCo, LLC, dated as of [●], 2020, to be duly executed as of the date first above written.

[●]

By:_____
Name:_____
Title:_____

Address for Notices:

[●]
[●]
[●]

Attn: [●]

Phone: [●]

Schedule A
Member Register

[See attached.]

Schedule B
Officers

[See attached.]

Schedule C
Competitive Businesses

[See attached.]

Exhibit A
Form of Joinder

[See attached.]

AMENDMENT NO. 1 TO THE
LIMITED LIABILITY COMPANY AGREEMENT
OF

VPROP OPERATING, LLC

This Amendment No. 1 to the Limited Liability Company Agreement of VPROP Operating, LLC, a Delaware limited liability company (the "***Company***"), is made and entered into as of [●], 2020[1] (this "***Amendment***"), by V SandCo, LLC, a Delaware limited liability company (the "***Member***").

BACKGROUND

WHEREAS, on June 9, 2020, Vista Proppants and Logistics, LLC, a Delaware limited liability company ("***Former Parent***"), the Company, and its Subsidiaries (collectively, the "***Debtors***") filed voluntary petitions to commence cases (the "***Bankruptcy Cases***") under title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the "***Bankruptcy Court***");

WHEREAS, in connection with the Chapter 11 Cases, the Debtors filed the Plan of Reorganization with the Bankruptcy Court on July 3, 2020 (as subsequently amended, revised or modified, the "***Chapter 11 Plan***");

WHEREAS, on October [●], 2020, the Bankruptcy Court entered the Confirmation Order approving the Chapter 11 Plan, which Confirmation Order, *inter alia*, authorized and approved (a) the Debtors' emergence from bankruptcy, (b) the adoption of the **[Updated Governance Documents]** (as defined in the Chapter 11 Plan), including this Amendment, (c) the assignment of all the Membership Interests of the Company held by the Former Parent to the Sole Member, and (d) the complete satisfaction, discharge, and release, effective as of the Plan Effective Date, of all Claims, Interests and Causes of Action (each as defined in the Chapter 11 Plan), including any interest accrued on Claims or Interests from and after the Petition Date, in accordance with the Chapter 11 Plan;

WHEREAS, in connection with the Chapter 11 Plan, the Member was assigned all of the Membership Interests of the Company held by Former Parent and is the sole owner of any Membership Interests of the Company;

WHEREAS, Former Parent was a party to that certain Limited Liability Company Agreement of the Company, dated as of October 23, 2017 (the "***Agreement***"); and

[1] ***Note to Draft:*** To be the Effective Date of the Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, *et al.*, Pursuant to Chapter 11 of the Bankruptcy Code.

WHEREAS, in connection with the Chapter 11 Plan and pursuant to Section 9.3(a) of the Agreement, the Member wishes to amend the Agreement in the manner set forth below.

NOW THEREFORE, in consideration of the matters set forth in the recitals and the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Member agrees as follows:

AGREEMENT

Section 1. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed thereto in the Agreement.

Section 2. The Agreement is hereby amended as follows:

2.1 Definitions. The following definition set forth in Section 1.1 of the Agreement is hereby amended and restated in its entirety as follows:

(a) "***Member***" means V SandCo, LLC, a Delaware limited liability company.

2.2. References. Other than as set forth in this Section 2.2, all references in the Agreement to "Vista Proppants and Logistics, LLC" shall be replaced with references to "V SandCo, LLC".

2.2. Exhibit A. Exhibit A to the Agreement is hereby replaced with Exhibit A attached hereto.

Section 3. Miscellaneous.

3.1.Construction; Ratification. This Amendment shall be construed in connection with and as a part of the Agreement, and all terms, conditions and covenants contained in the Agreement, except as modified by this Amendment, shall be and shall remain in full force and effect. The Member agrees that they are bound by the terms, conditions and covenants of the Agreement as amended by this Amendment. Each instance of "this Agreement" and instances of "herein", "hereunder", and other words of similar import used in the Agreement refer to the Agreement as amended by this Amendment..

3.2.Miscellaneous. Sections 9.1 (Application of Delaware Law), 9.2 (Headings and Sections), 9.4 (Number and Gender), 9.5 (Binding Effect), 9.6 (Severability of Provisions) and 9.7 (Exculpation and Indemnification) of the Agreement, as amended by this Amendment, are incorporated into and shall apply, *mutatis mutandis*, to this Amendment.

3.3. Counterparts. This Amendment may be executed in counterparts (including by facsimile, pdf. or other electronic transmission), each one of which shall be deemed an original and all of which together shall constitute one and the same Amendment. The signatures of all the parties hereto need not appear on the same counterpart.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Member has duly executed this Amendment as of the date first written above.

MEMBER:

V SANDCO, LLC

By: _____
Name:
Title:

EXHIBIT A

LIMITED LIABILITY COMPANY AGREEMENT

OF

VPROP OPERATING, LLC

(A Delaware Limited Liability Company)

1.	Name of Company:	VPROP Operating, LLC
2.	Address of Company:	4413 Carey Street Fort Worth, Texas 76119
3.	Telephone Number of Company	817-563-3539
4.	Facsimile Number of Company	_____
5.	Electronic Address of Company	ksmith@vprop.com
6.	Registered Agent and Registered Office	[●]
7.	Member:	
	Name of Member:	V SandCo, LLC
	Address	4413 Carey Street Fort Worth, Texas 76119
	Telephone Number:	817-563-3539
	Facsimile Number:	_____
	Electronic Address:	ksmith@vprop.com
	Date Became Member:	[●]

AMENDMENT NO. 1 TO THE
SECOND AMENDED AND RESTATED COMPANY AGREEMENT
OF

LONESTAR PROSPECTS MANAGEMENT, L.L.C.

This Amendment No. 1 to the Second Amended and Restated Company Agreement of Lonestar Prospects Management, L.L.C., a Texas limited liability company (the "***Company***"), is made and entered into as of [●], 2020[1] (this "***Amendment***"), by VPROP Operating, LLC, a Texas limited liability company (the "***Member***").

BACKGROUND

WHEREAS, the Member is a party to that certain Second Amended and Restated Company Agreement, dated as of November 3, 2017 (the "***Agreement***");

WHEREAS, the last sentence of Section 8(a) of the Agreement sets forth certain restrictions on the ability of the Member to take certain actions in connection with its management of the operations and affairs of the Company;

WHEREAS, the Member wishes **t**o amend Section 8(a) of the Agreement in the manner set forth below; and

WHEREAS, Section 14(a) of the Agreement permits amendments to the Agreement to be made only with the written consent of the Member.

NOW THEREFORE, in consideration of the matters set forth in the recitals and the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Member agrees as follows:

AGREEMENT

Section 1. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed thereto in the Agreement.

Section 2. The Agreement is hereby amended as follows:

2.1 The last sentence of Section 8(a) of the Agreement is hereby deleted in its entirety.

[1] ***Note to Draft:*** To be the Effective Date of the Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, *et al.*, Pursuant to Chapter 11 of the Bankruptcy Code.

Section 3. Miscellaneous.

3.1. Construction; Ratification. This Amendment shall be construed in connection with and as a part of the Agreement, and all terms, conditions and covenants contained in the Agreement, except as modified by this Amendment, shall be and shall remain in full force and effect. The Parties agree that they are bound by the terms, conditions and covenants of the Agreement as amended by this Amendment. Each instance of "this Agreement" and instances of "herein", "hereunder", and other words of similar import used in the Agreement refer to the Agreement as amended by this Amendment.

3.2. Miscellaneous. Sections 14(b) (Governing Law), Section 14(c) (Severability) and Section 14(d) (No Third Party Beneficiaries), as amended by this Amendment, are incorporated into and shall apply, *mutatis mutandis*, to this Amendment.

3.3.Counterparts. This Amendment may be executed in counterparts (including by facsimile, pdf. or other electronic transmission), each one of which shall be deemed an original and all of which together shall constitute one and the same Amendment. The signatures of all the parties hereto need not appear on the same counterpart.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Member has duly executed this Amendment as of the date first written above.

MEMBER:

VPROP OPERATING, LLC

By: V SandCo, LLC, its sole member

By: _____
Name:
Title:

AMENDMENT NO. 1 TO THE
SECOND AMENDED AND RESTATED COMPANY AGREEMENT
OF

MAALT SPECIALIZED BULK, LLC

This Amendment No. 1 to the Second Amended and Restated Company Agreement of Maalt Specialized Bulk, LLC, a Texas limited liability company (the "***Company***"), is made and entered into as of [●], 2020[1] (this "***Amendment***"), by VPROP Operating, LLC, a Texas limited liability company (the "***Member***").

BACKGROUND

WHEREAS, the Member is a party to that certain Second Amended and Restated Company Agreement, dated as of November 3, 2017 (the "***Agreement***");

WHEREAS, the last sentence of Section 8(a) of the Agreement sets forth certain restrictions on the ability of the Member to take certain actions in connection with its management of the operations and affairs of the Company;

WHEREAS, the Member to amend Section 8(a) of the Agreement in the manner set forth below; and

WHEREAS, Section 14(a) of the Agreement permits amendments to the Agreement to be made only with the written consent of the Member.

NOW THEREFORE, in consideration of the matters set forth in the recitals and the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Member agrees as follows:

AGREEMENT

Section 1. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed thereto in the Agreement.

Section 2. The Agreement is hereby amended as follows:

2.1 The last sentence of Section 8(a) of the Agreement is hereby deleted in its entirety.

[1] ***Note to Draft:*** To be the Effective Date of the Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, *et al.*, Pursuant to Chapter 11 of the Bankruptcy Code.

Section 3. Miscellaneous.

3.1. Construction; Ratification. This Amendment shall be construed in connection with and as a part of the Agreement, and all terms, conditions and covenants contained in the Agreement, except as modified by this Amendment, shall be and shall remain in full force and effect. The Parties agree that they are bound by the terms, conditions and covenants of the Agreement as amended by this Amendment. Each instance of "this Agreement" and instances of "herein", "hereunder", and other words of similar import used in the Agreement refer to the Agreement as amended by this Amendment.

3.2. Miscellaneous. Sections 14(b) (Governing Law), Section 14(c) (Severability) and Section 14(d) (No Third Party Beneficiaries) as amended by this Amendment, are incorporated into and shall apply, *mutatis mutandis*, to this Amendment.

3.3.Counterparts. This Amendment may be executed in counterparts (including by facsimile, pdf. or other electronic transmission), each one of which shall be deemed an original and all of which together shall constitute one and the same Amendment. The signatures of all the parties hereto need not appear on the same counterpart.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Member has duly executed this Amendment as of the date first written above.

MEMBER:

VPROP OPERATING, LLC

By: V SandCo, LLC, its sole member

By: _____
Name:
Title:

AMENDMENT NO. 1 TO THE
SECOND AMENDED AND RESTATED COMPANY AGREEMENT
OF

DENETZ LOGISTICS, L.L.C.

This Amendment No. 1 to the Second Amended and Restated Company Agreement of Denetz Logistics, L.L.C., a Texas limited liability company (the "***Company***"), is made and entered into as of [●], 2020[1] (this "***Amendment***"), by VPROP Operating, LLC, a Texas limited liability company (the "***Member***").

BACKGROUND

WHEREAS, the Member is a party to that certain Second Amended and Restated Company Agreement, dated as of November 3, 2017 (the "***Agreement***");

WHEREAS, the last sentence of Section 8(a) of the Agreement sets forth certain restrictions on the ability of the Member to take certain actions in connection with its management of the operations and affairs of the Company;

WHEREAS, the Member wishes **t**o amend Section 8(a) of the Agreement in the manner set forth below; and

WHEREAS, Section 14(a) of the Agreement permits amendments to the Agreement to be made only with the written consent of the Member.

NOW THEREFORE, in consideration of the matters set forth in the recitals and the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Member agrees as follows:

AGREEMENT

Section 1. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed thereto in the Agreement.

Section 2. The Agreement is hereby amended as follows:

2.1 The last sentence of Section 8(a) of the Agreement is hereby deleted in its entirety.

[1] ***Note to Draft:*** To be the Effective Date of the Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, *et al.*, Pursuant to Chapter 11 of the Bankruptcy Code.

Section 3. Miscellaneous.

3.1. Construction; Ratification. This Amendment shall be construed in connection with and as a part of the Agreement, and all terms, conditions and covenants contained in the Agreement, except as modified by this Amendment, shall be and shall remain in full force and effect. The Parties agree that they are bound by the terms, conditions and covenants of the Agreement as amended by this Amendment. Each instance of "this Agreement" and instances of "herein", "hereunder", and other words of similar import used in the Agreement refer to the Agreement as amended by this Amendment.

3.2. Miscellaneous. Sections 14(b) (Governing Law), Section 14(c) (Severability) and Section 14(d) (No Third Party Beneficiaries), as amended by this Amendment, are incorporated into and shall apply, *mutatis mutandis*, to this Amendment.

3.3.Counterparts. This Amendment may be executed in counterparts (including by facsimile, pdf. or other electronic transmission), each one of which shall be deemed an original and all of which together shall constitute one and the same Amendment. The signatures of all the parties hereto need not appear on the same counterpart.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Member has duly executed this Amendment as of the date first written above.

MEMBER:

VPROP OPERATING, LLC

By: V SandCo, LLC, its sole member

By: _____
Name:
Title:

AMENDMENT NO. 1 TO THE SECOND AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT OF

LONESTAR PROSPECTS, LTD.

This Amendment No. 1 to the Second Amended and Restated Limited Partnership Agreement of Lonestar Prospects, Ltd., a Texas limited partnership (the "***Company***"), is made and entered into as of [●], 2020[1] (this "***Amendment***"), by and between Lonestar Prospects Management, L.L.C., a Texas limited liability company (the "***General Partner***"), and VPROP Operating, LLC, a Texas limited liability company (the "***Limited Partner***").

BACKGROUND

WHEREAS, the General Partner and the Limited Partner are parties to that certain Second Amended and Restated Limited Partnership Agreement, dated as of November 3, 2017 (the "***Agreement***");

WHEREAS, the last sentence of Section 7(a) of the Agreement sets forth certain restrictions on the ability of the General Partner to take certain actions in connection with its management of the operations and affairs of the Company;

WHEREAS, the General Partner and the Limited Partner wish to amend Section 7(a) of the Agreement in the manner set forth below; and

WHEREAS, Section 20 of the Agreement permits amendments to the Agreement to be made only with the written consent of the General Partner and the Limited Partner.

NOW THEREFORE, in consideration of the matters set forth in the recitals and the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the General Partner and the Limited Partner agree as follows:

AGREEMENT

Section 1. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed thereto in the Agreement.

Section 2. The Agreement is hereby amended as follows:

[1] ***Note to Draft:*** To be the Effective Date of the Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, *et al.*, Pursuant to Chapter 11 of the Bankruptcy Code.

2.1 The last sentence of Section 7(a) of the Agreement is hereby deleted in its entirety.

Section 3. Miscellaneous.

3.1. Construction; Ratification. This Amendment shall be construed in connection with and as a part of the Agreement, and all terms, conditions and covenants contained in the Agreement, except as modified by this Amendment, shall be and shall remain in full force and effect. The Parties agree that they are bound by the terms, conditions and covenants of the Agreement as amended by this Amendment. Each instance of "this Agreement" and instances of "herein", "hereunder", and other words of similar import used in the Agreement refer to the Agreement as amended by this Amendment.

3.2. Miscellaneous. Section 21 (Notices), Section 22 (Governing Law), Section 23 (Headings), Section 24 (Severability), and Section 26 (Entire Agreement) of the Agreement, as amended by this Amendment, are incorporated into and shall apply, *mutatis mutandis*, to this Amendment.

3.3.Counterparts. This Amendment may be executed in counterparts (including by facsimile, pdf. or other electronic transmission), each one of which shall be deemed an original and all of which together shall constitute one and the same Amendment. The signatures of all the parties hereto need not appear on the same counterpart.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the General Partner and the Limited Partner have duly executed this Amendment as of the date first written above.

GENERAL PARTNER:

LONESTAR PROSPECTS MANAGEMENT, L.L.C.

By: VPROP Operating, LLC, its sole member

By: V SandCo, LLC, its sole member

By: _____
Name:
Title:

LIMITED PARTNER:

VPROP OPERATING, LLC

By: V SandCo, LLC, its sole member

By: _____
Name:
Title:

AMENDMENT NO. 1 TO THE SECOND AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT OF

MAALT, L.P.

This Amendment No. 1 to the Second Amended and Restated Limited Partnership Agreement of MAALT, L.P.., a Texas limited partnership (the "***Company***"), is made and entered into as of [●], 2020[1] (this "***Amendment***"), by and between Denetz Logistics, L.L.C., a Texas limited liability company (the "***General Partner***"), and VPROP Operating, LLC, a Texas limited liability company (the "***Limited Partner***").

BACKGROUND

WHEREAS, the General Partner and the Limited Partner are parties to that certain Second Amended and Restated Limited Partnership Agreement, dated as of November 3, 2017 (the "***Agreement***");

WHEREAS, the last sentence of Section 7(a) of the Agreement sets forth certain restrictions on the ability of the General Partner to take certain actions in connection with its management of the operations and affairs of the Company;

WHEREAS, the General Partner and the Limited Partner wish to amend Section 7(a) of the Agreement in the manner set forth below; and

WHEREAS, Section 20 of the Agreement permits amendments to the Agreement to be made only with the written consent of the General Partner and the Limited Partner.

NOW THEREFORE, in consideration of the matters set forth in the recitals and the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the General Partner and the Limited Partner agree as follows:

AGREEMENT

Section 1. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed thereto in the Agreement.

Section 2. The Agreement is hereby amended as follows:

[1] ***Note to Draft:*** To be the Effective Date of the Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, *et al.*, Pursuant to Chapter 11 of the Bankruptcy Code.

2.1 The last sentence of Section 7(a) of the Agreement is hereby deleted in its entirety.

Section 3. Miscellaneous.

3.1. Construction; Ratification. This Amendment shall be construed in connection with and as a part of the Agreement, and all terms, conditions and covenants contained in the Agreement, except as modified by this Amendment, shall be and shall remain in full force and effect. The Parties agree that they are bound by the terms, conditions and covenants of the Agreement as amended by this Amendment. Each instance of "this Agreement" and instances of "herein", "hereunder", and other words of similar import used in the Agreement refer to the Agreement as amended by this Amendment.

3.2. Miscellaneous. Section 21 (Notices), Section 22 (Governing Law), Section 23 (Headings), Section 24 (Severability), and Section 26 (Entire Agreement) of the Agreement, as amended by this Amendment, are incorporated into and shall apply, *mutatis mutandis*, to this Amendment.

3.3.Counterparts. This Amendment may be executed in counterparts (including by facsimile, pdf. or other electronic transmission), each one of which shall be deemed an original and all of which together shall constitute one and the same Amendment. The signatures of all the parties hereto need not appear on the same counterpart.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the General Partner and the Limited Partner have duly executed this Amendment as of the date first written above.

GENERAL PARTNER:

DENETZ LOGISTICS, L.L.C.

By: VPROP Operating, LLC, its sole member

By: V SandCo, LLC, its sole member

By: _____
Name:
Title:

LIMITED PARTNER:

VPROP OPERATING, LLC

By: V SandCo, LLC, its sole member

By: _____
Name:
Title:

Exhibit 2

Identities of the Officers of the Reorganized Debtors

Reserved.[7]

[7] The identities of the officers of the Reorganized Debtors will be disclosed on or before the date of the Confirmation Hearing, to the extent known at such time.

Exhibit 3

Identities and Affiliations of the Members of the New Parent Board

Reserved.[8]

[8] The identities and affiliations of the New Parent Board will be disclosed on or before the date of the Confirmation Hearing, to the extent known at such time.

Exhibit 4

Exit Facility Documents

CREDIT AGREEMENT

dated as of [●], 2020,

among

V SANDCO, LLC,
as Parent,

VPROP OPERATING, LLC,
as the Borrower,

ARES CAPITAL CORPORATION,
as Administrative Agent,

and

the Lenders party hereto

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS AND ACCOUNTING MATTERS 2

Section 1.01. Terms Defined Above 2
Section 1.02. Certain Defined Terms 2
Section 1.03. Terms Generally; Rules of Construction 33
Section 1.04. Accounting Terms and Determinations; GAAP 33
Section 1.05. Divisions 34

ARTICLE II THE CREDIT FACILITIES 34

Section 2.01. Tranche A Commitments; Tranche B Loans; Tranche C Loans 34
Section 2.02. Method of Borrowing 35
Section 2.03. Notes 35
Section 2.04. Interest Rates; Payments 36
Section 2.05. Mandatory Termination of Tranche A Commitments; Maturity 37
Section 2.06. Application of Payments 37
Section 2.07. Incremental Borrowings 38
Section 2.08. OID 41
Section 2.09. Defaulting Lenders 41

ARTICLE III REPAYMENTS; PREPAYMENTS 42

Section 3.01. Repayment of Obligations 42
Section 3.02. Mandatory Prepayments 42
Section 3.03. Voluntary Prepayments 43

ARTICLE IV PAYMENTS; PRO RATA TREATMENT; SHARING OF SET-OFFS 44

Section 4.01. Payments Generally; Pro Rata Treatment; Sharing of Set-offs 44
Section 4.02. Presumption of Payment by the Borrower 45
Section 4.03. Disposition of Proceeds 46

ARTICLE V INCREASED COSTS; TAXES; ILLEGALITY 46

Section 5.01. Increased Costs 46
Section 5.02. Taxes 47
Section 5.03. Mitigation Obligations 50
Section 5.04. Illegality 50
Section 5.05. Benchmark Replacement Setting 50

ARTICLE VI CONDITIONS PRECEDENT 51

Section 6.01. Effective Date 51
Section 6.02. Each Credit Event 54

ARTICLE VII REPRESENTATIONS AND WARRANTIES 54

Section 7.01. Organization; Powers 54
Section 7.02. Authority; Enforceability 54
Section 7.03. Approvals; No Conflicts 55
Section 7.04. No Material Adverse Change 55
Section 7.05. Litigation 55
Section 7.06. Environmental Matters 55

Section 7.07. Compliance with the Laws and Agreements; No Defaults 56
Section 7.08. Investment Company Act 56
Section 7.09. Taxes 57
Section 7.10. ERISA 57
Section 7.11. Disclosure; No Material Misstatements 58
Section 7.12. Insurance 58
Section 7.13. [Reserved] 58
Section 7.14. Subsidiaries and Capitalization 58
Section 7.15. Location of Business and Offices 59
Section 7.16. Properties; Titles, Etc 59
Section 7.17. [Reserved] 59
Section 7.18. [Reserved] 59
Section 7.19. [Reserved] 59
Section 7.20. Swap Agreements 59
Section 7.21. Use of Loans 60
Section 7.22. Solvency 60
Section 7.23. Material Contracts 60
Section 7.24. Foreign Corrupt Practices 60
Section 7.25. OFAC 60
Section 7.26. [Reserved] 60
Section 7.27. [Reserved] 60
Section 7.28. Accounts 61

ARTICLE VIII AFFIRMATIVE COVENANTS 61

Section 8.01. Financial Statements; Other Information 61
Section 8.02. Notices of Material Events 62
Section 8.03. Existence; Conduct of Business 63
Section 8.04. Payment of Obligations 63
Section 8.05. Performance of Obligations 63
Section 8.06. Operation and Maintenance of Properties 64
Section 8.07. Insurance 64
Section 8.08. Books and Records; Inspection Rights 64
Section 8.09. Compliance with Laws 65
Section 8.10. Environmental Matters 65
Section 8.11. Further Assurances 65
Section 8.12. [Reserved] 66
Section 8.13. Title Information 66
Section 8.14. Additional Collateral; Additional Guarantors 66
Section 8.15. ERISA Compliance 67
Section 8.16. [Reserved] 67
Section 8.17. [Reserved] 67
Section 8.18. [Post-Closing Obligations 68

ARTICLE IX NEGATIVE COVENANTS 68

Section 9.01. Liquidity 68
Section 9.02. [Reserved] 68
Section 9.03. Debt 68
Section 9.04. Liens 70
Section 9.05. Restricted Payments 70
Section 9.06. Investments and Loans 71

Section 9.07. Nature of Business; No International Operations ... 72
Section 9.08. [Reserved] ... 72
Section 9.09. Proceeds of Loans ... 72
Section 9.10. ERISA Compliance ... 72
Section 9.11. [Reserved] ... 73
Section 9.12. Mergers, Etc ... 73
Section 9.13. Sale of Properties ... 74
Section 9.14. Environmental Matters ... 74
Section 9.15. Transactions with Affiliates ... 75
Section 9.16. Subsidiaries ... 75
Section 9.17. [Reserved] ... 75
Section 9.18. [Reserved] ... 75
Section 9.19. Swap Agreements ... 75
Section 9.20. [Reserved] ... 75
Section 9.21. [Reserved] ... 75
Section 9.22. Changes in Fiscal Year End ... 75
Section 9.23. [Reserved] ... 75
Section 9.24. Sanctions ... 75

ARTICLE X EVENTS OF DEFAULT; REMEDIES ... 76

Section 10.01. Events of Default ... 76
Section 10.02. Remedies ... 78

ARTICLE XI THE ADMINISTRATIVE AGENT ... 78

Section 11.01. Appointment and Authority ... 78
Section 11.02. Rights as a Lender ... 79
Section 11.03. Exculpatory Provisions ... 79
Section 11.04. Reliance by Administrative Agent ... 80
Section 11.05. Delegation of Duties ... 80
Section 11.06. Resignation of Administrative Agent ... 80
Section 11.07. Non-Reliance on Administrative Agent, Administrative Agent and Other Lenders ... 81
Section 11.08. Administrative Agent May File Proofs of Claim; Credit Bidding ... 81
Section 11.09. Collateral and Guaranty Matters ... 83
Section 11.10. Action by Administrative Agent ... 83

ARTICLE XII MISCELLANEOUS ... 84

Section 12.01. Notices ... 84
Section 12.02. Waivers; Amendments ... 84
Section 12.03. Expenses, Indemnity; Damage Waiver ... 86
Section 12.04. Successors and Assigns ... 88
Section 12.05. Survival; Revival; Reinstatement ... 91
Section 12.06. Counterparts; Integration; Effectiveness ... 92
Section 12.07. Severability ... 92
Section 12.08. Right of Setoff ... 92
Section 12.09. GOVERNING LAW; JURISDICTION; CONSENT TO SERVICE OF PROCESS ... 93
Section 12.10. Headings ... 94
Section 12.11. Confidentiality ... 94
Section 12.12. Interest Rate Limitation ... 95

Section 12.13.	EXCULPATION PROVISIONS	95
Section 12.14.	No Third Party Beneficiaries	96
Section 12.15.	USA Patriot Act Notice	96
Section 12.16.	No Advisory or Fiduciary Responsibility	96
Section 12.17.	Electronic Execution of Assignments and Certain Other Documents	96
Section 12.18.	[Reserved]	97
Section 12.19.	Cashless Settlement	97
Section 12.20.	Acknowledgement and Consent to Bail-In of Affected Financial Institutions	97
Section 12.21.	Acknowledgement Regarding Any Supported QFCs	97

ANNEXES, EXHIBITS AND SCHEDULES

Annex I	—	Tranche A Commitments, Tranche B Loans and Tranche C Loans
Exhibit A-1	—	Form of Tranche A Note
Exhibit A-2	—	Form of Tranche B Note
Exhibit A-3	—	Form of Tranche C Note
Exhibit B	—	Form of Borrowing Request Notice
Exhibit C	—	Reserved
Exhibit D	—	Reserved
Exhibit E	—	Form of Assignment and Assumption
Exhibit F-1	—	Form of U.S. Tax Compliance Certificate (Foreign Lenders; Not Partnerships)
Exhibit F-2	—	Form of U.S. Tax Compliance Certificate (Foreign Participants; Not Partnerships)
Exhibit F-3	—	Form of U.S. Tax Compliance Certificate (Foreign Participants; Partnerships)
Exhibit F-4	—	Form of U.S. Tax Compliance Certificate (Foreign Lenders; Partnerships)
Schedule 1.02A	—	Effective Date Mortgages
Schedule 1.02B	—	Effective Date Subsidiary Guarantors
Schedule 7.05	—	Litigation
Schedule 7.06	—	Environmental Matters
Schedule 7.14(a)	—	Loan Parties and Subsidiaries
Schedule 7.14(b)	—	Capitalization
Schedule 7.14(c)	—	Option, Redemption Rights, Etc.
Schedule 7.20	—	Swap Agreements
Schedule 7.23	—	Material Contracts
Schedule 7.28	—	Accounts
Schedule 8.19	—	Other Post-Closing Deliverables
Schedule 9.03	—	Existing Debt
Schedule 9.04	—	Existing Liens
Schedule 9.06	—	Existing Investments

THIS CREDIT AGREEMENT dated as of [●], 2020, is among V SandCo, LLC, a Delaware limited liability company ("**Parent**"), VPROP Operating, LLC, a Delaware limited liability company (the "**Borrower**"), each of the Lenders from time to time party hereto and Ares Capital Corporation, as administrative agent and collateral agent for the Lenders (in such capacities, together with its successors in such capacities, the "**Administrative Agent**").

R E C I T A L S

A. Reference is made to that certain Amended and Restated Senior Secured Credit Agreement dated as of November 9, 2017 (as amended, supplemented or otherwise modified prior to the date hereof, the "**Prepetition Credit Agreement**"), among Vista Proppants and Logistics, LLC, a Delaware limited liability company (the "**Former Parent**"), the Borrower, the lenders from time to time party thereto (the "**Prepetition Lenders**") and Ares Capital Corporation, as administrative agent.

B. On June 9, 2020 (the "**Petition Date**"), the Former Parent, the Borrower and its Subsidiaries (collectively, the "**Debtors**") filed voluntary petitions to commence cases (the "**Chapter 11 Cases**") under title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the "**Bankruptcy Court**") and continued in the possession of their assets and in the management of their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

C. In connection with the Chapter 11 Cases, the Borrower and the Former Parent entered into that certain Senior Secured Debtor-in-Possession Credit Agreement dated as of June 12, 2020 (as amended, supplemented or otherwise modified prior to the date hereof, the "**DIP Credit Agreement**"), among the Debtors, the lenders party thereto (the "**DIP Lenders**") and Ares Capital Corporation, in its capacity as administrative agent and collateral agent, pursuant to which the DIP Lenders made term loans to the Borrower in an aggregate principal amount equal to $[11,000,000] (the "**DIP Facility**").

D. In connection with the Chapter 11 Cases, the Debtors filed the Plan of Reorganization with the Bankruptcy Court on July 3, 2020 (as subsequently amended, revised or modified, the "**Chapter 11 Plan**").

E. On October [_], 2020, the Bankruptcy Court entered the Confirmation Order approving the Chapter 11 Plan, which Confirmation Order, *inter alia*, authorized and approved (i) the Debtors' emergence from bankruptcy, (ii) the adoption of the [Updated Governance Documents] (as defined in the Chapter 11 Plan), (iii) the establishment of the [New Parent Board] (as defined in the Chapter 11 Plan) of Parent, (iv) the complete satisfaction, discharge, and release, effective as of the Plan Effective Date, of all Claims, Interests and Causes of Action (each as defined in the Chapter 11 Plan), including any interest accrued on Claims or Interests from and after the Petition Date, in accordance with the Chapter 11 Plan, and (iv) the entry into and performance under this Agreement.

F. The Borrower has requested that the Lenders provide the Borrower with a new senior secured delayed draw term loan credit facility in an aggregate principal amount of up to $91,000,000 (the "**Exit Facility**"), which shall consist of (x) a new money delayed draw term loan facility in an aggregate principal amount of up to $30,000,000, (y) a $11,000,000 term loan facility, consisting of the aggregate outstanding principal amount of DIP Loans that are deemed to be refinanced with Tranche B Loans hereunder on the date hereof at a principal rate of $1 of Tranche B Loans for each $1 of DIP Loans, and (z) a $50,000,000 term loan facility, consisting of the outstanding principal amount of the Prepetition Term Loans that are deemed to be refinanced hereunder on the date hereof at a principal rate of $1 of Tranche C Loans for each $1 of Prepetition Term Loans which, together with the other transactions contemplated to occur on or prior to the date hereof pursuant to the Chapter 11 Plan, will represent the full and final

satisfaction for each of the Lenders' secured claims arising under the Chapter 11 Cases in each case to be afforded the liens and priority set forth in the Confirmation Order and as set forth herein and in the other Loan Documents.

G. In connection with the foregoing, the Lenders are willing to establish the Exit Facility and make loans to the Borrower pursuant thereto, on the terms and subject to the conditions set forth herein.

H. In consideration of the mutual covenants and agreements herein contained and of the loans and commitments hereinafter referred to, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING MATTERS

Section 1.01. Terms Defined Above. As used in this Agreement, each term defined above has the meaning indicated above.

Section 1.02. Certain Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"**ABL Lenders**" means the lenders from time to time party to any Permitted ABL Facility.

"**ABL Loan Documents**" means "Loan Documents" (or similar term) as defined in any Permitted ABL Facility.

"**ABL Obligations**" means "Obligations" (or similar term) as defined in any Permitted ABL Facility.

"**Accepting Lenders**" has the meaning assigned such term in Section 3.02(e).

"**Act**" has the meaning assigned such term in Section 12.15.

"**Additional Lender**" has the meaning assigned to such term in Section 2.07(b)(i).

"**Administrative Agent**" has the meaning assigned to such term in the introductory paragraph of this Agreement.

"**Administrative Questionnaire**" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"**Affected Financial Institution**" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"**Affected Loans**" has the meaning assigned such term in Section 5.04.

"**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. "**Affiliated**" shall have a correlative meaning.

"**Agreement**" means this Credit Agreement (including all exhibits and schedules), as the same may from time to time be amended, modified, supplemented or restated.

"**All-In Yield**" means as to any Debt, the yield thereof, whether in the form of interest rate, margin, OID, upfront fees, a Eurodollar or "base rate" floor, or otherwise (including any "exit fee" that is payable upon termination of the commitments to provide such Debt and the repayment of such Debt in full), in each case, incurred or payable by the Loan Parties generally to all lenders of such Debt; *provided* that OID and upfront fees shall be equated to an interest rate assuming a 4-year life to maturity on a straight-line basis (e.g., 100 basis points of original issue discount equals 25 basis points of interest margin for a four year average life to maturity) or, if less, the stated life to maturity at the time of incurrence of the applicable Debt; and *provided*, *further*, that "All-In Yield" shall not include amendment fees, consent fees, arrangement fees, structuring fees, commitment fees, underwriting fees, placement fees, advisory fees, success fees, ticking fees, undrawn commitment fees and similar fees (regardless of whether any of the foregoing fees are paid to, or shared with, in whole or in part any or all lenders), any fees not paid or payable in the primary syndication of such Debt or other fees not paid or payable generally to all lenders ratably.

"**Angelo Gordon**" means AG Energy Funding, LLC or any of its Change of Control Affiliates and any funds or accounts controlled, managed or advised by AG Energy Funding, LLC or any of its Change of Control Affiliates.

"**Applicable Margin**" means a rate per annum equal to 9.50%.

"**Approved Counterparty**" means (a) any ABL Lender or any Affiliate of an ABL Lender or (b) any other Person whose long term senior unsecured debt rating (or whose guarantor's or credit support provider's long term senior unsecured debt rating) is A-/Aa-3 by S&P and Moody's, respectively, (or their equivalent) or higher.

"**Approved Sale**" has the meaning assigned to such term in the Parent LLC Agreement.

"**ARCC**" means Ares Capital Corporation or any of its Change of Control Affiliates and any funds or accounts controlled, managed or advised by Ares Capital Corporation or any of its Change of Control Affiliates.

"**Asset Sale**" means any disposition or series of related dispositions of Property (excluding Recovery Events and any disposition permitted by Section 9.13(a), Section 9.13(b), Section 9.13(c), Section 9.13(d), Section 9.13(e), Section 9.13(f), Section 9.13(g) or Section 9.13(h)) but (for the purposes of Section 3.02) excluding sales or dispositions of Property to the extent that the aggregate value of such Property sold in any single transaction or related series of transactions is equal to $10,000,000 or less (with respect to the gross proceeds to any Loan Party or its Subsidiaries in connection with any Asset Sale, such proceeds shall be valued at the initial principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at fair market value in the case of other non-cash proceeds).

"**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 the form of Exhibit E or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

"**Available Tenor**" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 5.05(d).

"**Bail-In Action**" means the exercise of any Write-Down and Conversion Powers by the applicable Affected Resolution Authority in respect of any liability of an Affected Financial Institution.

"**Bail-In Legislation**" means (a) 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, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"**Bankruptcy Event**" means, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business 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 Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permits such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"**Bankruptcy Code**" has the meaning assigned such term in the recitals hereto.

"**Bankruptcy Court**" has the meaning assigned such term in the recitals hereto.

"**Blocked Account Control Agreement**" means an agreement in form and substance reasonably acceptable to the Administrative Agent establishing the Administrative Agent's Control with respect to any Deposit Account. For purposes of this definition, "Control" means "control" within the meaning of Section 9-104 of the UCC.

"**Benchmark**" means, initially, USD LIBOR; provided that if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to USD LIBOR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (a) of this Section titled "Benchmark Replacement Setting."

"**Benchmark Replacement**" means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;

(2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;

(3) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a

benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"**Benchmark Replacement Adjustment**" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(1) for purposes of clauses (1) and (2) of the definition of "Benchmark Replacement," the first alternative set forth in the order below that can be determined by the Administrative Agent:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(2) for purposes of clause (3) of the definition of "Benchmark Replacement," the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities;

provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion.

"**Benchmark Replacement Conforming Changes**" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and

implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"**Benchmark Replacement Date**" means the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein; or

(3) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"**Benchmark Transition Event**" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such

Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"**Beneficial Ownership Certification**" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"**Beneficial Ownership Regulation**" means 31 C.F.R. §1010.230.

"**BHC Act Affiliate**" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"**Board**" 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 introductory paragraph of this Agreement.

"**Borrowing**" means Loans made on the same date. "**Borrowing Request Notice**" means a notice of request by the Borrower for a Borrowing in accordance with Section 2.02, which shall be substantially in the form of Exhibit B (or such other form as may be approved by the Administrative Agent including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

"**Business Day**" means any day that is not a Saturday, Sunday or other day on which commercial banks in Houston, Texas are authorized or required by law to remain closed.

"**Capital Leases**" means, in respect of any Person, all leases which shall have been, or should have been, in accordance with GAAP, recorded as capital leases on the balance sheet of the Person liable for the payment of rent thereunder; *provided* that for purposes of calculations made pursuant to the terms of this Agreement or compliance with any covenant, GAAP will be deemed to treat leases in a manner consistent with its treatment under GAAP as of December 31, 2018, notwithstanding any modifications or interpretive changes thereto that may occur thereafter.

"**Cash Equivalents**" means (a) 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 year from the date of creation thereof; (b) commercial paper maturing within one year from the date of creation thereof having a rating of at least P-1 or A-1 from either Moody's or S&P, respectively; (c) deposits maturing within one 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 $1,000,000 (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 A1 or P1, as such rating is set forth from time to time, by S&P or Moody's, respectively; and (d) deposits in money market funds investing not less than 90% of their assets in Investments described in the foregoing items.

"**Casualty Event**" means any loss, casualty or other insured damage to, or any nationalization, taking under power of eminent domain or by condemnation or similar proceeding of, any Property of the Borrower or any Subsidiary.

"**CERCLA**" has the meaning assigned such term in the definition of Environmental Laws.

"**Change in Law**" means (a) the adoption or taking effect of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender (or, for purposes of Section 5.01(b)), by any Lending Office of such Lender or by such Lender's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; *provided* that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) 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 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.

"**Change of Control**" means the Permitted Holders collectively shall cease to directly or indirectly own, or cease to have the power to vote or direct the voting of, (a) Equity Interests of Parent representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Parent on a fully-diluted basis or (b) except in a transaction permitted by Section 9.12(d)(ii), Equity Interests of the Borrower representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower on a fully-diluted basis.

"**Change of Control Affiliate**" means as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition and the definitions of "Permitted Holders", "ARCC", "Angelo Gordon" and "MSD", "control" of a Person (including, with its correlative meanings, "controlled by" and "under common control with") means the power, directly or indirectly, to direct or cause the direction of the general management and policies of such Person, whether by contract or otherwise.

"**Chapter 11 Plan**" has the meaning assigned such term in the recitals hereto.

"**Class**", when used in reference to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Tranche A Loans, Tranche B Loans, Tranche C Loans or Incremental Term Loans, (b) any Commitment, refers to whether such Commitment is a Tranche A Commitment or Incremental Term Commitment and (c) any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments.

"**Class A Units**" means the Class A Units of Parent, as more fully defined in the Parent LLC Agreement.

"**Code**" means the Internal Revenue Code of 1986, and any successor statute.

"**Collateral**" means any and all property owned, leased or operated by any Loan Party covered by the Security Instruments and any and all other property of any Loan Party, now existing or hereafter acquired, that may at any time be or become subject to a security interest or Lien in favor of the Administrative Agent, for the benefit of the Secured Parties, to secure the Obligations[; *provided* that notwithstanding anything in this Agreement or any other Loan Document to the contrary, other than with respect to the Sand Hill Lease, the Lonestar Prop 50 Lease, the Tolar Lease and the Winkler Lease, no Building (as defined in the applicable Flood Insurance Regulations) or Manufactured (Mobile) Home (as defined in the applicable Flood Insurance Regulations) owned by the Borrower or any other Loan Party shall be included in the Collateral unless and until the Lenders are given 30 days' prior written notice thereof and each Lender confirms within such 30 day period to the Administrative Agent that its flood due diligence has been completed and flood insurance compliances has been confirmed (including the receipt of evidence of any required flood insurance)].

"**Commitment**" means as to each Lender, its Tranche A Commitment or Incremental Term Loan Commitment, expressed as an amount representing the maximum principal amount of the Loan of the applicable Class to be made by such Lender under this Agreement, as such commitment may be reduced from time to time or increased pursuant to the terms of this Agreement (including an Incremental Amendment).

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. §1 et seq.), as amended from time to time, and any successor statute, and any regulations promulgated thereunder.

"**Confirmation Order**" means the order of the Bankruptcy Court dated [●], 2020 Docket No. [●] confirming the Chapter 11 Plan, which order authorized and approved the Debtors' entry into and performance under this Agreement.

"**Consolidated EBITDA**" means, for any period, with respect to the Borrower and its Subsidiaries on a consolidated basis, Consolidated Net Income for such period *plus* (a) without duplication and to the extent deducted in calculating Consolidated Net Income for such period, the sum of (i) Consolidated Interest Expense for such period, (ii) the sum of federal, state, local and foreign income Taxes accrued or paid in cash during such period, (iii) the amount of depreciation, depletion and amortization expense deducted in determining Consolidated Net Income, (iv) any extraordinary, unusual or non-recurring items reducing Consolidated Net Income for such period, (v) any non-cash items reducing Consolidated Net Income for such period, (vi) fees, charges and expenses incurred in connection with this Agreement and the other Loan Documents (including the negotiation, execution and delivery thereof), (vii) customary and reasonable non-recurring out of pocket transaction fees and expenses incurred in connection with a Permitted Acquisition or other Investments permitted hereunder or incurred in connection with an unsuccessful acquisition that Borrower reasonably believed would have otherwise constituted a Permitted Acquisition had it been consummated or an Investment that would have otherwise been permitted hereunder if consummated, (viii) customary and reasonable non-recurring out-of-pocket transaction fees incurred to source, evaluate or perform due diligence relating to or in connection with Investments permitted hereunder or the issuance, administration, prepayment, amendment, or refinancing of Debt (including all fees and expenses of the agent or lenders under any such Debt, including attorney's fees) or issuance of Equity Interests permitted hereunder, whether or not such transactions are consummated, (ix) losses on asset sales to the extent reducing Consolidated Net Income for such period, (x) losses with respect to any Swap Agreement, (xi) [reserved], (xii) any losses from discontinued operations, (xiii) non-recurring litigation expenses, (xiv) expenses in opening new sand processing or mining facilities or facilities relating to transportation or logistics or substantial expansions of existing sand processing or mining facilities or facilities relating to transportation and logistics, (xv) [reserved], (xvi) [reserved], (xvii) fees, charges and expenses incurred in connection with any Permitted ABL Facility (including the negotiation, execution and

delivery thereof), whether or not such transactions are consummated and (xviii) other non-recurring costs and expenses reasonably approved by the Required Lenders, *minus* (b) without duplication and to the extent included in calculating Consolidated Net Income for such period, the sum of (i) any extraordinary, unusual or non-recurring items increasing Consolidated Net Income for such period, (ii) any non-cash items increasing Consolidated Net Income for such period, (iii) gains on asset sales to the extent increasing Consolidated Net Income for such period and (iv) gains with respect to any Swap Agreement. For the purposes of calculating Consolidated EBITDA for any period, if at any time during such period (and after the Effective Date), the Borrower or any Subsidiary shall have made a Permitted Acquisition or any sale, assignment, conveyance or other transfer of Property, in each case, with a dollar value in excess of $5,000,000, Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto (including pro forma adjustments arising out of events which are directly attributable to such Permitted Acquisition, are factually supportable, and are expected to have a continuing impact, in each case to be mutually and reasonably agreed upon by the Borrower and the Administrative Agent) as if any such Permitted Acquisition (or adjustment) or such sale, assignment, conveyance or other transfer occurred on the first day of such period.

"**Consolidated Interest Expense**" means, for any period, with respect to the Borrower and its Subsidiaries on a consolidated basis, total interest expense, whether paid or not, (including that portion attributable to capital leases in accordance with GAAP and capitalized interest) premium payments, debt discount, fees, charges and related expenses with respect to all outstanding Debt of the Borrower and its Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit, including net payments under interest rate Swap Agreements to the extent such net payments are allocable to such period in accordance with GAAP, in each case whether or not paid in cash during such period.

"**Consolidated Net Income**" means, for any period, the consolidated net income (or loss) of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP; *provided* that, except as set forth in the definition of Consolidated EBITDA regarding giving pro forma effect to Permitted Acquisitions and other dispositions or transfers of Property, there shall be excluded the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with Borrower or any of its Subsidiaries.

"**Consolidated Subsidiaries**" means each subsidiary of Parent (whether now existing or hereafter created or acquired) the financial statements of which are (or should be) consolidated with the financial statements of Parent in accordance with GAAP.

"**Contractual Obligations**" means, with respect to any Person, any term, condition or provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound, and with respect to any Loan Party, shall include such Loan Party's obligations under any Material Contract.

"**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. For the purposes of this definition, and without limiting the generality of the foregoing, any Person that owns directly or indirectly 10% or more of the Equity Interests having ordinary voting power for the election of the directors or other governing body of a Person (other than as a limited partner of such other Person) will be deem to "control" such other Person. "**Controlling**" and "**Controlled**" have meanings correlative thereto.

"**Conversion Documentation**" has the meaning assigned such term in Section 3.03(d)(ii).

"**Converting Debt**" means, as of any date of determination, the outstanding principal balance of the Loans, all accrued interest thereon and all unpaid fees, expenses and other Obligations owing to the Lenders.

"**Converting Debt Percentage**" means the amount, expressed as a percentage rounded to four decimal places, equal to (a) 100.0000% less (b) the amount, expressed as a percentage rounded to four decimal places, obtained by dividing the Converting Debt by the Sale Consideration. By way of illustration of the foregoing only, if the Converting Debt were $1.00 and the Sale Consideration was $5.00, the Converting Debt Percentage would be equal to (100.0000% – 20.0000%), or 80.0000%.

"**Corresponding Tenor**" with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

"**Covered Entity**" means any of the following: (a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"**Covered Party**" has the meaning assigned such term in Section 12.21.

"**Daily Simple SOFR**" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

"**Debt**" means, for any Person, 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 accrued expenses, liabilities or other obligations of such Person to pay the deferred purchase price of Property or services (excluding accounts payable incurred in the ordinary course of business consistent with past practices and which are not past due by more than sixty (60) days); (d) all obligations under Capital Leases; (e) all Debt (as defined in the other clauses of this definition) of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) a Lien on any Property of such Person, whether or not such Debt is assumed by such Person; (f) all Debt (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 Debt (howsoever such assurance shall be made) to the extent of the lesser of the amount of such Debt and the maximum stated amount of such guarantee or assurance against loss; (g) all obligations or undertakings of such Person to maintain or cause to be maintained the financial position or covenants of others and, to the extent entered into as a means of providing credit support for the obligations of others and not primarily to enable such Person to acquire any such Property; (h) any Debt (as defined in the other clauses of this definition) 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 (i) Disqualified Capital Stock. The Debt of any Person shall include all obligations of such Person of the character described above to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is not included as a liability of such Person under GAAP.

"**Debt Conversion**" has the meaning assigned such term in Section 3.03(d)(i).

"**Debtor Relief Laws**" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"**Debtors**" has the meaning assigned such term in the recitals hereto.

"**Declining Lender**" has the meaning assigned such term in Section 3.02(e).

"**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.

"**Default Right**" has the meaning assigned to such term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"**Defaulting Lender**" means any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans or (ii) pay over to the Administrative Agent any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent and Borrower in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (such writing to specifically identify and include the particular default, if any) has not been satisfied, (b) has notified the Administrative Agent, Borrower or any Loan Party in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan under this Agreement cannot be satisfied), (c) has become the subject of a Bankruptcy Event, or (d) has become the subject of a Bail-in Action.

"**Deposit Account**" has the meaning specified in the UCC.

"**Designated Jurisdiction**" means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

"**DIP Credit Agreement**" has the meaning assigned such term in the recitals hereto.

"**DIP Facility**" has the meaning assigned such term in the recitals hereto.

"**DIP Lenders**" has the meaning assigned such term in the recitals hereto.

"**DIP Loans**" means the loans made and outstanding under the DIP Credit Agreement as of the Effective Date immediately prior to giving effect to the effectiveness of this Agreement.

"**Disqualified Capital Stock**" means any Equity Interest (regardless of whether it would constitute indebtedness or a liability in accordance with GAAP) 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, (a) 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 (except as a result of a change of control, asset sale or similar event so long as any rights of the holders thereof upon the occurrence of a change of control, asset sale or similar event shall be subject to the prior repayment in full

of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), or (b) is convertible or exchangeable for Debt or redeemable for any consideration (other than other Equity Interests (which would not constitute Disqualified Capital Stock) or as a result of a change of control, asset sale or similar event so long as any rights of the holders thereof upon the occurrence of a change of control, asset sale or similar event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments) at the option of the holder thereof, in whole or in part, in each case, on or prior to the date that is 91 days after the Maturity Date; *provided* that if such Equity Interests are issued pursuant to a plan for the benefit of employees of any Loan Party, such Equity Interests shall not constitute Disqualified Capital Stock solely because they may be required to be repurchased by the Borrower or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

"**Disqualified Lender**" means the Persons (if any) identified in writing by the Borrower to the Administrative Agent prior to the Effective Date; provided that the identity of such Persons shall be reasonably acceptable to the Administrative Agent. To the extent any Disqualified Lenders have been identified in writing by the Borrower to the Administrative Agent prior to the Effective Date, the Administrative Agent will deliver a list of the Disqualified Lenders to all Lenders.

"**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.

"**Early Opt-in Election**" means, if the then-current Benchmark is USD LIBOR, the occurrence of:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least [five][9] currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.

"**Effective Date**" means the date on which the conditions specified in Section 6.01 are satisfied (or waived in accordance with Section 12.02).

"**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 Assignee**" means (a) a Lender, (b) an Affiliate of a Lender and (c) a Related Party of a Lender; *provided* that "Eligible Assignee" shall not include at any time any Defaulting Lender.

"**Environmental Laws**" means any and all applicable Governmental Requirements pertaining to pollution or protection of the environment, the protection of health as it relates to exposure to Hazardous Materials in the environment or 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 of the other Loan Parties is conducting or at any time has conducted business, or where any Property of the Borrower or any of the other Loan Parties is located, including, without limitation, the Oil Pollution Act of 1990, the Clean Air Act, the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 ("**CERCLA**"), the Federal Water Pollution Control Act, the Occupational Safety and Health Act of 1970, the Resource Conservation and Recovery Act of 1976, ("**RCRA**"), the Safe Drinking Water Act, the Toxic Substances Control Act, the Superfund Amendments and Reauthorization Act of 1986, and the Hazardous Materials Transportation Act.

"**Environmental Permit**" means any permit, registration, license, approval, consent, exemption, variance, 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 Interest.

"**ERISA**" means the Employee Retirement Income Security Act of 1974.

"**ERISA Affiliate**" means each Person which together with the Borrower or any other Loan Party would be treated as a "single employer" under Section 4001(b)(1) of ERISA or subsection (b), (c), (m) or (o) of Section 414 of the Code.

"**ERISA Event**" means any one of the following: (a) a "reportable event" described in Section 4043 of ERISA or the regulations issued thereunder (other than events for which the thirty (30) day notice period has been waived) with respect to a Pension Plan; (b) a failure by the Borrower, any other Loan Party or any ERISA Affiliate to meet any applicable requirement under the Pension Funding Rules or the filing of an application for the waiver of the minimum funding standards under the Pension Funding Rules; (c) a determination that any Pension Plan is, or is expected to be, in "at-risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (d) the withdrawal of the Borrower, any other Loan Party or any ERISA Affiliate from a Pension Plan during a plan year in which it was a "substantial employer" as defined in Section 4001(a)(2) of ERISA; (e) the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination under Section 4041 of ERISA; (f) receipt by the Borrower, any other Loan Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Pension Plan or to appoint a trustee to administer any Pension Plan; (g) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (h) the imposition or incurrence of any liability under Title IV of ERISA, other than for contributions due but not delinquent under the Pension Funding Rules or PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower, any other Loan Party or any ERISA Affiliate; (i) the receipt by the Borrower,

any other Loan Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower, any other Loan Party or any ERISA Affiliate of any notice, concerning the imposition of "withdrawal liability" pursuant to Section 4202 of ERISA or a determination that a Multiemployer Plan is, or is expected to be, insolvent within the meaning of Title IV of ERISA, or is in endangered or critical status with the meaning of Section 305 of ERISA; (j) the engagement by the Borrower, any other Loan Party or any ERISA Affiliate in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; (k) the imposition of a lien upon property or rights to property of the Borrower, any other Loan Party or any ERISA Affiliate pursuant to Section 430(k) of the Code or Section 303(k) of ERISA; (l) the making of an amendment to a Pension Plan that could result in the posting of bond or security under Section 436(f)(1) of the Code; or (m) the disqualification by the IRS of any Plan intended to be qualified under Section 401(a) of the Code, or the determination by the IRS that any trust forming part of any Pension Plan intended to qualify under Section 401(a) of the Code fails to qualify for exemption from taxation under Section 501(a) of the Code, or, in each case, the receipt from the IRS of notice of failure to qualify as such.

"**EU Bail-In Legislation Schedule**" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Event of Default**" has the meaning assigned 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 or common law landlord's liens, operators', vendors', carriers', warehousemen's, repairmen's, mechanics', suppliers', workers', materialmen's, construction or other like Liens arising by operation of law, each of which is in respect of obligations that are not overdue for a period of more than thirty (30) days or, if more than thirty (30) days overdue, are unfiled and no other action has been taken to enforce such Liens, 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 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 and no such deposit account is intended by the Borrower or any of the other Loan Parties to provide collateral to the depository institution; (e) easements, restrictions (including zoning restrictions), encroachments, licenses, protrusions, servitudes, permits, conditions, covenants, exceptions or reservations in any Property of the Borrower or any of the other Loan Parties, including for the purpose of roads, pipelines, transmission lines, transportation lines, distribution lines and other means of ingress and egress for the removal of gas, oil, coal or other minerals or timber, and other like purposes, or for the joint or common use of real estate, rights of way, facilities and equipment, any exceptions on the mortgage policies issued in connection with the Mortgaged Properties, and leases or subleases of real property and any interest or title of a lessee or sublessee under any such lease or sublease, in each case, that do not secure any monetary obligations 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 of the other Loan Parties or materially impair the value of such Property subject thereto and which do not impair or diminish the Administrative Agent's or Secured Parties' Liens on the Mortgaged Property; (f) pledges or deposits or Liens on cash or securities pledged to secure performance of tenders, surety, stay, customs and appeal bonds, government contracts, performance and return of money bonds, bids, trade contracts, utilities, leases, statutory obligations, regulatory obligations and other obligations of a like nature

(including those to secure health, safety and environmental obligations) incurred in the ordinary course of business; (g) Liens in favor of the depository bank arising under documentation governing deposit accounts or in any Control Agreement (as defined in the Security Agreement) or Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the UCC, which Liens secure the payment of returned items, settlement item amounts, bank fees, or similar items or fees; (h) 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; (iii) notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings for which adequate reserves have been made with respect thereto on the books of the applicable Person in accordance with GAAP; (i) Liens on any Vehicle to the extent the aggregate value (as determined by the Borrower in its reasonable and good faith judgment) of all Vehicles subject to such Liens does not exceed $10,000,000 at any time outstanding; (j) a Lien existing on any Property prior to the acquisition thereof by any Loan Party or any Subsidiary or existing on any Property of any Person that becomes a Loan Party after the date hereof prior to the time such Person becomes a Loan Party; *provided* that (A) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Loan Party, as applicable, (B) such Lien shall not apply to any other Property of such Loan Party (other than the proceeds, products and accessions thereof and other than after-acquired property subjected to a Lien securing Debt and other obligations incurred prior to such time and which Debt and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition), (C) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Loan Party, as applicable, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof and (D) the aggregate principal amount of the obligations secured thereby does not exceed $[15,000,000] at any time outstanding; (k) licenses of intellectual property rights granted in the ordinary course of business, which in the aggregate do not materially impair the use of any Property owned by the Borrower or any of the other Loan Parties for the purposes of which such Property is held by the Borrower or any of the other Loan Parties or materially impair the value of such Property subject thereto and which do not impair or diminish the Administrative Agent's or Secured Parties' Liens on such Property; (l) [liens arising under Section 11 of the Prop 50 Lease in favor of Lonestar Prop 50, LLC, each of which is in respect of obligations that are not delinquent]; (m) pledges and deposits 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 any Loan Party; (n) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business; (o) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any Subsidiary in the ordinary course of business permitted by this Agreement; (p) Liens that are contractual rights of set-off or rights of pledge relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Subsidiaries in the ordinary course of business; (q) Liens solely on any cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder; (r) Liens arising from precautionary Uniform Commercial Code financing statement or similar filings in connection with operating leases or consignments of goods or securing obligations permitted to be incurred on a secured basis under Section 9.03 and elsewhere under Section 9.04; (s) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto; *provided*, *further* that (x) all such Liens described in clauses [(a) through (e) and (l)] shall remain "Excepted Liens" only for so long as no action to enforce such Lien has been commenced and no intention to subordinate the Lien granted in favor of the

Administrative Agent and the Lenders is to be hereby implied or expressed by the permitted existence of such Excepted Liens and (y) the term "Excepted Liens" shall not include any Lien securing Debt for borrowed money other than the Obligations.

"**Excess Requested Incremental Term Loans**" has the meaning assigned to such term in Section 2.07(b)(ii).

"**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 imposed on (or measured by) its net income and franchise Taxes (including the Texas franchise Tax) imposed on it (in lieu of income Taxes), in each case, by the United States of America or such other jurisdiction 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, (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, any United States federal withholding Tax that is imposed on amounts payable to (i) such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (other than pursuant to an assignment request by the Borrower) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 5.02, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (d) is attributable to such Foreign Lender's failure to comply with Section 5.02(f) or (e) any United States federal withholding Taxes under FATCA.

"**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), any current and future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreement implementing any of the foregoing.

"**FCPA**" means the Foreign Corrupt Practices Act of 1977.

"**Fee Letter**" means the Fee Letter, dated as of the Effective Date, by and among the Borrower, Parent and the Administrative Agent.

"**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.

"**First Incremental Offer Deadline**" has the meaning assigned to such term in Section 2.07(b)(ii).

"**First Offer**" has the meaning assigned such term in Section 3.02(e).

"**First Offer Deadline**" has the meaning assigned such term in Section 3.02(e).

"**Fiscal Quarter**" means a fiscal quarter ending on March 31, June 30, September 30 or December 31 of each year.

"**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.

"**Floor**" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR.

"**Foreign Lender**" means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is located. 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.

"**Former Parent**" has the meaning assigned such term in the recitals hereto.

"**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.

"**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.

"**Governmental Requirement**" means any law, statute, code, ordinance, order, legally binding determination, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, rules of common law, authorization or other legally binding directive or requirement, whether now or hereinafter in effect, of any Governmental Authority.

"**Guarantors**" means Parent and each Subsidiary Guarantor.

"**Guaranty Agreement**" means the Guaranty Agreement, dated as of the Effective Date, executed by the Guarantors in favor of the Administrative Agent pursuant to which the Guarantors unconditionally guarantee, on a joint and several basis, payment of the Obligations.

"**Hazardous Material**" means any substance regulated or as to which liability might arise under any Environmental Law, or any other Governmental Requirements related to pollution or protection of the environment or human health through exposure to the environment, 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.

"**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 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.

"**Incremental Accepting Tranche A Lender**" has the meaning assigned to such term in Section 2.07(b)(ii).

"**Incremental Amendment**" has the meaning assigned to such term in Section 2.07(d).

"**Incremental Facility Closing Date**" has the meaning assigned to such term in Section 2.07(d).

"**Incremental Term Loan**" has the meaning assigned to such term in Section 2.07(c).

"**Incremental Loan Request**" has the meaning assigned to such term in Section 2.07(a).

"**Incremental Term Commitments**" has the meaning assigned to such term in Section 2.07(a).

"**Incremental Term Lender**" has the meaning assigned to such term in Section 2.07(b)(i).

"**Indemnified Parties**" means the Administrative Agent, each other Secured Party and their respective officers, directors, employees, representatives, agents, attorneys, accountants and experts.

"**Indemnified Taxes**" means Taxes other than Excluded Taxes.

"**Indemnitee**" has the meaning assigned such term in Section 12.03(b).

"**Information**" has the meaning assigned such term in Section 12.11.

"**ISDA Definitions**" means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

"**Interest Period**" means each period from and including a Monthly Payment Date to but excluding the next succeeding Monthly Payment Date.

"**Investment**" means, for any Person, (a) the acquisition (whether for cash, Property, services or securities or otherwise) of Equity Interests in any other Person or any agreement to make any such acquisition (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 Debt of, purchase or other acquisition of any other Debt 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 the 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, Debt or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person. The amount of any Investment shall be the original cost or amount of such Investment plus the cost or amount of all additions thereto, without any adjustment for increases or decreases in value, or write-ups, write-downs, or write-offs with respect to such Investment, minus any actual returns received in cash or Cash Equivalents on such Investment.

"**IRS**" means the United States Internal Revenue Service (including any successor agency).

"**Lenders**" means the Persons listed on Annex I and any Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than, in each case, any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

"**Lending Office**" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

"**LIBO Rate**" means the greater of: (a) 1.50% and (b) the LIBO Screen Rate at approximately 11:00 a.m., London time, two Business Days prior to (x) in the case of determinations of interest to the first Monthly Payment Date after the date of a Borrowing, the date of such Borrowing and (y) in the case of determinations of interest to subsequent Monthly Payment Dates and the Maturity Date, the preceding Monthly Payment Date, in each for an amount of deposits of US dollars equal to the principal amount with respect to which interest is being determined and a maturity of three months.

"**LIBO Screen Rate**" means the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes on the administration of such rate) as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or on any successor or substitute page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market).

"**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 the lien or security interest arising from a deed of trust, mortgage, 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, in each case, where the effect is to secure an obligation owed to, or a claim by, a Person other than the owner of the Property. For the purposes of this Agreement, the Borrower or any other Loan Party shall be deemed to be the owner of any Property which it has acquired or holds 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) the unrestricted cash and Cash Equivalents of the Borrower and its Subsidiaries, (b) the undrawn available commitment under the Permitted ABL Facility (if any), (c) the undrawn available Tranche A Commitments (if any) and (d) the undrawn available Incremental Term Commitments (if any).

"**Litigation Trust**" has the meaning set forth in the Chapter 11 Plan.

"**Litigation Trust Agreement**" has the meaning set forth in the Chapter 11 Plan.

"**Litigation Trust Loan**" means the non-recourse loan made from the Borrower to the Litigation Trust on the Effective Date in the aggregate principal amount of $250,000 pursuant to, and in accordance with, the Chapter 11 Plan and the Litigation Trust Note.

"**Litigation Trust Note**" means that certain Unsecured Promissory Note dated as of the Effective Date, by and between the Litigation Trust, as payor, and the Borrower, as payee.

"**Loan**" means any Tranche A Loan, Tranche B Loan, Tranche C Loan or Incremental Term Loan, as the context may require.

"**Loan Documents**" means this Agreement, the Notes, the Guaranty Agreement, the Security Instruments, the Fee Letter and each other document, instrument, certificate and agreement designated as a Loan Document by any of the Loan Parties and the Administrative Agent from time to time. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

"**Loan Parties**" means, collectively, the Borrower and each Guarantor.

["**Lonestar Prop 50 Lease**" means that certain Lease Agreement, effective August 27, 2015, by and between Vista Sand and Lonestar Prop 50, LLC.]

"**Material Contract**" means the following: (a) each contract or other agreement referenced on Schedule 7.23 and (b) any other contract or agreement pursuant to which the Borrower or any of its Subsidiaries pays, receives or incurs liabilities (or could reasonably be expected to pay, receive or incur liabilities during the term thereof) in excess of $10,000,000 over the life of such contract or agreement and if breached could reasonably be expected to cause a Material Adverse Effect, together with all amendments, modifications, replacements, extensions and rearrangements of the foregoing made in accordance with the terms of this Agreement.

"**Material Adverse Effect**" means a material adverse change in, or material adverse effect on, (a) the business, operations, Property or financial condition of the Borrower and the other Loan Parties, taken as a whole, (b) the ability of the Borrower individually, or the Loan Parties, taken as a whole, to perform any of its or their obligations under any Loan Document, (c) the validity or enforceability of any Loan Document or (d) the material rights and remedies of or benefits available to the Administrative Agent or any Lender under any Loan Document.

"**Material Indebtedness**" means Debt (other than the Loans), or obligations in respect of one or more Swap Agreements, of any one or more of the Borrower and the Subsidiaries in an aggregate principal amount exceeding $10,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Borrower or any of its Subsidiaries in respect of any Swap Agreement at any time shall be the Swap Termination Value.

"**Maturity Date**" means the date that is four years after the Effective Date; provided, that if such date is not a Business Day, then the Maturity Date shall be the next succeeding Business Day.

"**Member Joinder**" means a joinder in the form of Exhibit A attached to the Parent LLC Agreement.

"**Moody's**" means Moody's Investors Service, Inc. and any successor thereto that is a nationally recognized rating agency.

"**Monthly Payment Date**" means the first day of each calendar month prior to the Maturity Date.

"**Mortgage**" means each mortgage, deed of trust or other agreement which conveys or evidences a Lien in favor of the Administrative Agent, for the benefit of the Secured Parties, on any Mortgaged Property, including any amendment, restatement, modification or supplement thereto, in each case in form and substance reasonably acceptable to the Administrative Agent. The Mortgages as of the Effective Date are identified on Schedule 1.02A.

"**Mortgage Policies**" has the meaning assigned such term in Section 8.13.

"**Mortgaged Property**" means the Properties described in Schedule 1.02B any and all other real Property owned or leased by the Borrower or any Subsidiary Guarantor which is subject to the Liens or other encumbrances in favor of the Administrative Agent, for the benefit of the Secured Parties, now or hereafter granted, existing or arising under or in connection with the terms of the Security Instruments.

"**MSD**" means MSD Partners, L.P. or any of its Change of Control Affiliates and any funds or accounts controlled, managed or advised by MSD Partners, L.P. or any of its Change of Control Affiliates

"**Multiemployer Plan**" means a "multiemployer plan" as defined in Section 3(37) or 4001(a)(3) of ERISA to which the Borrower, any Subsidiary or any ERISA Affiliate contributes or is required to contribute or with respect to which the Borrower or any Subsidiary has or may have any direct or indirect liability (whether actual or contingent).

"**Net Cash Proceeds**" means (a) in connection with any Asset Sale or any Recovery Event, the proceeds thereof in the form of cash and cash equivalents (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 excluding any interest payments, but only as and when received) of such Asset Sale or Recovery Event, net of (i) amounts required to be applied to the repayment of Debt secured by a Lien expressly permitted hereunder on any asset that is the subject of such Asset Sale or Recovery Event (other than any Lien pursuant to a Security Instrument), (ii) in the case of an Asset Sale, attorneys' fees, accountants' fees, investment bank fees and other reasonable and customary fees and expenses actually incurred in connection therewith (including brokers' fees or commissions, discounts and other professional and transactional fees, transfer and similar taxes and the Borrower's good faith estimate of income taxes paid or payable in connection with such sale (after taking into account any available tax credits or deductions and any payments or payable amounts under tax sharing arrangements permitted under the Loan Documents)), and (iii) in the case of an Asset Sale, Tax Distribution Amounts paid in connection with such Asset Sale, and (b) in connection with any issuance or sale of Equity Interests or debt securities or instruments or the incurrence of Debt for borrowed money, the cash proceeds received from such issuance, sale or incurrence, net of Taxes, attorneys' fees, accountants' fees, investment bank fees, underwriting discounts and commissions and other reasonable and customary fees and expenses actually incurred in connection therewith. For the avoidance of doubt, the proceeds from or payment in respect of any business interruption claim shall not be deemed "Net Cash Proceeds".

"**Notes**" the Tranche A Notes, the Tranche B Notes, the Tranche C Notes and each other promissory note of the Borrower payable to any Lender or its registered assigns that has requested a promissory note pursuant to Section 2.03, evidencing the Obligations of the Borrower to such Lender resulting from Incremental Term Loans made by such Lender.

"**Obligations**" means (a) any and all amounts owing or to be owing 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) to the Administrative Agent, any Lender or any Indemnified Party under this Agreement or any of the Loan Documents, including, without limitation, all

unpaid principal of the Loans, all accrued and unpaid interest on the Loans (including any interest that accrues after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of any Loan Party (or could accrue but for the operation of applicable Debtor Relief Laws), whether or not such interest is allowed or allowable as a claim in any such case, proceeding or other action), all accrued and unpaid fees, and all expenses, reimbursements, indemnities and other obligations, indebtedness and liabilities of the Borrower or any Loan Party to the Administrative Agent, any Lender or any Indemnified Party under this Agreement or any of the other Loan Documents or in respect of the Loans; and (b) all renewals, extensions and/or rearrangements of any of the above.

"**OFAC**" means the Office of Foreign Assets Control of the United States Department of Treasury.

"**Organizational 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 or limited liability company 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 Taxes**" means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery, performance, registration of or enforcement of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement and any other Loan Document.

"**Parent**" has the meaning assigned to such term in the introductory paragraph of this Agreement.

"**Parent LLC Agreement**" means the Amended and Restated LLC Agreement of Parent, dated as of [___], 2020, by and among the Parent and the members from time to time party thereto.

"**Participant**" has the meaning assigned such term in Section 12.04(c)(i).

"**Participant Register**" has the meaning assigned such term in Section 12.04(c)(i).

"**PBGC**" means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under Title IV of ERISA.

"**Pension Funding Rules**" means the rules of the Code and ERISA regarding minimum funding standards (including any installment payment thereof) to Multiemployer Plans and Pension Plans and set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

"**Pension Plan**" means any "employee pension benefit plan" (as defined in Section 3(2) of ERISA, other than a Multiemployer Plan) that is maintained or is contributed to, or is required to be maintained or contributed to, by the Borrower, any other Loan Party or any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 or 430 of the Code or Section 302 or 303 of ERISA, or with respect to which the Borrower or any other Loan Party has or may have any direct or indirect liability (whether actual or contingent).

"**Permitted ABL Facility**" means an asset-based credit facility extended to the Borrower or any other Loan Party and reasonably acceptable to the Administrative Agent; *provided* that (a) no Subsidiary of the Borrower shall be an obligor or guarantor under or in respect of such facility unless such Subsidiary is a Subsidiary Guarantor, and the obligations thereunder shall not be guaranteed by any Person that is not a Loan Party, (b) to the extent that the obligations of any Loan Party under such Permitted ABL Facility are secured by a Lien on the Collateral or other assets of the Borrower and its Subsidiaries, the administrative agent, collateral agent and/or a similar representative acting on behalf of the holders of obligations under such facility shall have become party to, and such holders shall be bound by, a Permitted ABL Intercreditor Agreement and (c) such asset-based credit facility will include terms and conditions customary for asset-based credit facilities for businesses in similar industries as the Borrower and its Subsidiares or such other terms are otherwise reasonably acceptable to the Required Lenders.

"**Permitted ABL Intercreditor Agreement**" means, with respect to any Permitted ABL Facility, any intercreditor agreement, in form and substance reasonably acceptable to the Administrative Agent, the Required Lenders and the Borrower (in each case, such acceptance not to be unreasonably withheld, denied or conditioned), which provides that, with respect to accounts receivable, inventory, equipment and other assets of the Loan Parties (and the proceeds thereof) that secure the obligations under such Permitted ABL Facility, the Liens created under the Security Instruments on such Property (or a subset thereof) securing the Obligations shall (to the extent required by the lenders under such Permitted ABL Facility) either be released and only serve as collateral for such Permitted ABL Facility or be junior and subordinated to the Liens securing such Permitted ABL Facility, in each case, on terms and conditions that are within the range of terms and conditions customary for intercreditor agreements that are of the type that govern intercreditor relationships between holders of senior secured credit facilities that have "split liens", "crossed liens" or a "first lien/second lien" structure or as otherwise reasonably acceptable to the Required Lenders.

"**Permitted Acquisition**" means an acquisition (or series of related acquisitions), by merger or otherwise, by Borrower or any Subsidiary of assets, operations or Equity Interests of any Person, *provided* that: (a) immediately after giving effect thereto, no Default shall have occurred and be continuing or would result therefrom, (b) all transactions related thereto shall be consummated in accordance in all material respects with applicable laws, (c) in the case of any acquisition of Equity Interests in any Person, such acquisition is an acquisition of one hundred percent (100%) of the Equity Interests of such Person, (d) in case of an acquisition of assets, such assets (other than assets to be retired or disposed of within ninety (90) days) are to be used in the same line of business or a business reasonably related thereto and (e) the Loan Parties shall comply with the requirements set forth in Section 8.14 and Section 9.12. Notwithstanding anything to the contrary contained in the immediately preceding sentence, an acquisition which does not otherwise meet the requirements set forth above in the definition of "**Permitted Acquisition**" shall constitute a Permitted Acquisition if, and to the extent, the Required Lenders agree in writing, prior to the consummation thereof, that such acquisition shall constitute a Permitted Acquisition for purposes of this Agreement.

"**Permitted Holders**" means each of (a) ARCC, (b) Angelo Gordon, (c) MSD, (d) [investors in Parent who were at the time of investment members of senior management of Parent] and (e) the Qualified Owners.

"**Permitted Tax Distribution**" means, for any taxable period or portion thereof in which the Borrower is a pass through entity (including a disregarded entity or partnership) for federal income tax purposes, payments and distributions which are distributed to the direct or indirect holders of the Equity Interests of the Borrower on or prior to each estimated payment date as well as each other applicable due date to enable such holders to timely make payments of federal, state and local taxes for such taxable period as a result of the operations of the Borrower, in an aggregate amount not to exceed (a) the net taxable

income (which shall mean the net taxable income of the Borrower and its Subsidiaries required to be reported to Borrower's direct or indirect holders for federal income tax purposes) of the Borrower and its Subsidiaries for such period, and (b) the highest applicable marginal U.S. federal, state and local tax rates applicable to an individual or, if higher, a corporation resident in New York City, New York.

"**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 hereto.

"**PIK Interest**" means interest that is added to the outstanding principal balance of the Loans in accordance with Section 2.04(a), which shall thereafter be deemed principal bearing interest at the rate set forth in Section 2.04(a).

"PIK Interest Amount" means, with respect to each Class of Loans, the aggregate amount of interest due and payable as of such date with respect to such Class of Loans.

"**Plan**" means any "employee benefit plan" as defined in Section 3(3) of ERISA (other than a Multiemployer Plan) maintained or established for employees of the Borrower, Parent or a Subsidiary, or any such plan to which the Borrower, Parent or a Subsidiary contributes on behalf of any of its employees or with respect to which the Borrower has or may have any direct or indirect liability (whether actual or contingent).

"**Plan Effective Date**" means the "Effective Date" as defined in the Chapter 11 Plan.

"**Pledge Agreement**" means the Pledge Agreement dated as of the date hereof among the Parent and the Administrative Agent, pursuant to which the Parent grants Liens on, and a security interest in, the Equity Interests owned by the Parent and the other "collateral" defined therein in favor of the Administrative Agent for the benefit of the Secured Parties to secure the Obligations.

"**Prepayment Date**" means, (a) with respect to any mandatory prepayment pursuant to Section 3.02, the date of such mandatory prepayment and (b) with respect to any voluntary prepayment pursuant to Section 3.03, the date of such voluntary prepayment.

"**Prepetition Credit Agreement**" has the meaning assigned such term in the recitals hereto.

"**Prepetition Lenders**" has the meaning assigned such term in the recitals hereto.

"**Prepetition Term Loans**" means the loans made and outstanding under the Prepetition Credit Agreement as of the date hereof, immediately prior to giving effect to the effectiveness of this Agreement.

"**Property**" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including, without limitation, cash, securities, accounts and contract rights.

"**Purchase Price Refund**" means any amount received by any Loan Party after the Effective Date as a result of a purchase price adjustment or similar event in connection with any acquisition of Property by such Loan Party.

"**QFC**" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"**QFC Credit Support**" has the meaning assigned such term in Section 12.21.

"**Qualified Businesses**" means any company engaged in the oil field services or industrial applications business or any transportation or logistics related to any of the foregoing.

"**Qualified Owner**" means any Person that alone, or with its Affiliates, owns (or has an Affiliate that owns), or has owned, one or more Qualified Businesses; provided, that prior to any such Person becoming an owner, directly or indirectly, of any equity interest in the Borrower, (w) the Administrative Agent shall have received written notice of the proposed acquisition by such Person of such equity interest at least fifteen (15) Business Days prior to such acquisition (the Administrative Agent agreeing that it shall in turn promptly deliver a copy of any such notice to the Lenders), (x) the Administrative Agent shall have provided to the Borrower within five (5) Business Days of the Administrative Agent's receipt of such notice, a reasonably detailed description of all documentation and other information reasonably required by any Lender pursuant to its applicable "know your customer" and anti-money laundering rules and regulations consistently applied in connection with such proposed acquisition, if any, (y) such Person (either directly or through the Borrower) shall have provided to the Administrative Agent such requested documentation and other information within five (5) Business Days after it shall have received notice of the same pursuant to clause (x), and (z) the Administrative Agent (on behalf of any Lender (acting in good faith)) shall not have objected to such Person's acquisition of such equity interest within fifteen (15) Business Days of the notice received pursuant to clause (w) above solely on the basis that such Person's, direct or indirect, ownership of Equity Interests in the Borrower would violate any such Lender's "know your customer" and anti-money laundering and anti-terrorism rules and regulations consistently applied, and if any such Lender shall have so objected solely on such basis, then such prospective owner shall not be a "Qualified Owner" hereunder and the related transaction shall be a "Change of Control"; provided, further that, if such Person (or the Borrower) fails to provide all documentation and other information reasonably requested by the Administrative Agent pursuant to clause (y) above, the fifteen (15) Business Days referenced in clause (z) above shall be extended on a day-for-day basis for the actual number of Business Days beyond the five (5) Business Days that it takes such Person (or the Borrower) to actually deliver such information and documentation.

"**Qualified Sale Transaction**" means an Approved Sale of Parent where (a) the Sale Consideration is greater than or equal to the amount of the Converting Debt as of the date of such Approved Sale and (b) the Sale Consideration consists of (i) only non-cash consideration or (ii) a combination of non-cash consideration and cash consideration.

"**RCRA**" has the meaning assigned such term in the definition of Environmental Laws.

"**Recovery Event**" means any settlement of or payment in respect of any property, casualty or claim or any condemnation proceeding (or proceeding in lieu thereof) (including any Casualty Event) relating to any asset of any Loan Party to the extent the applicable settlement, payment or aggregate value of the Property subject to such event exceeds $10,000,000.

"**Redemption**" means with respect to any Debt, the repurchase, redemption, prepayment, repayment, satisfaction and discharge or defeasance or any other acquisition or retirement for value (or the segregation of funds with respect to any of the foregoing) of any such Debt. "**Redeem**" has the correlative meaning thereto.

"**Reference Time**" with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two London banking days

preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by the Administrative Agent in its reasonable discretion.

"**Register**" has the meaning assigned such term in Section 12.04(b)(iii).

"**Related Parties**" means, with respect to any specified Person, such Person's Affiliates and the respective partners, directors, officers, employees, agents, trustees, advisors and sub-advisors (including attorneys, accountants and experts) of such Person and 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.

"**Relevant Governmental Body**" means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

"**Remedial Work**" has the meaning assigned such term in Section 8.10(a).

"**Required Lenders**" means (a) at any time when there is only one Lender, such Lender and (b) at any time when there are two (2) or more Lenders, at least two (2) Lenders holding Loans and unused Commitments representing more than fifty percent (50%) of the sum of (x) the aggregate principal amount of Loans (without regard to any sale by a Lender of a participation in any Loan under Section 12.04(c)) outstanding at such time plus (y) the total unused Commitments at such time. For purposes of this definition, any Lenders that are Affiliated shall be deemed to be a single Lender.

"**Requirement of Law**" means, as to any Person, any law, treaty, rule, regulation statute, order, ordinance, decree, judgment, consent decree, writ, injunction, settlement agreement or governmental requirement enacted, promulgated or imposed or entered into or agreed by any Governmental Authority, in each case applicable to or binding upon such Person or any of its property or assets or to which such Person or any of its property or assets is subject.

"**Resignation Effective Date**" has the meaning assigned such term in Section 11.06(a).

"**Resolution Authority**" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"**Responsible Officer**" means, as to any Person, the chief executive officer, the president, any Financial Officer or any vice president of such Person and, solely for purposes of requests and notices given pursuant to Article II, any other officer of such Person so designated by any of the foregoing officers of such Person in a notice to the Administrative Agent. Unless otherwise specified, all references to a Responsible Officer herein shall mean a Responsible Officer of the Borrower. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"**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 Subsidiary, or any payment (whether in cash 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 Subsidiary.

"**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.

"**Sale Consideration**" means as of any date, the fair market value of the total consideration to be paid in connection with an Approved Sale, as of such date, with the fair market value of the type of consideration described below being determined as follows:

(a) cash shall be valued at the value, in U.S. Dollars, of such cash consideration;

(b) securities listed on one or more national securities exchanges shall be valued at their last reported sales prices on the consolidated tape on the date of determination (or if the date of determination is not a Business Day, on the last Business Day immediately prior to such date of determination). If no such sales of such securities occurred on such date, such securities shall be valued at the mean of the last "bid" and "ask" prices on the date of determination on the national securities exchange which has the highest average daily volume for such security over the last 60 days on or prior to the date of determination (or, if the date of determination is not a date upon which such national securities exchange was open for trading, on the last prior date on which such national securities exchange was so open);

(c) securities which are not listed on a national securities exchange but that are reported by NASDAQ or the "pink sheets" published by the National Daily Quotation Service (or their respective successors) shall be valued at a price equal to the mean of the last "bid" and "ask" prices on the date of determination as reported by the NASDAQ or as reported in the "pink sheets" published by the National Daily Quotation Service (or their respective successors);

(d) securities for which no such market prices are available, or as to which, in the determination of the board of directors of Parent, any of the above market prices are below or exceed (as the case may be) the amount realizable by the members of Parent upon a sale thereof, shall be valued at the fair value thereof as determined by the board of directors of Parent; and

(e) the fair market value of other investments, assets or properties shall be valued as determined by the Board of Directors of Parent.

"**Sanction(s)**" means any sanction administered or enforced by the Government of the United States of America (including without limitation, OFAC).

["**Sand Hill Lease**" means that certain Lease Agreement, dated April 14, 2011, by and between Vista Sand and Sand Hill Land and Cattle, LLC, as amended by that certain First Amendment to Lease Agreement, dated effective as of April 1, 2012, as further amended by that certain Second Amendment to Lease Agreement, dated as of January 1, 2014, as further amended by that certain Third Amendment to Lease Agreement, dated as of September 18, 2014, as further amended by that certain Fourth Amendment to Lease Agreement, dated as of November 4, 2015, as further amended by that certain Fifth Amendment to Lease Agreement, dated as of February 1, 2019, and as further amended by that certain Sixth Amendment to Lease Agreement, dated as of March 1, 2020.]

"**Sand Interests**" means all rights, titles, interests and estates now or hereafter acquired in and to real property which contains or may contain minerals appropriate for extraction and processing into

commercial grade sand, and rights to excavate, produce or recover such minerals, including any lease, mineral leases, fee interests, overriding royalty and royalty interests, net profit interests and production payment interests, including any reserved or residual interests of whatever nature, in each case with respect to such minerals. Unless otherwise indicated herein, each reference to the term "Sand Interests" shall mean Sand Interests of the Loan Parties.

"**Sand Properties**" means (a) Sand Interests; (b) all operating agreements, contracts and other agreements, including production sharing contracts and agreements, which relate to any of the Sand Interests or the production, sale, purchase, exchange or processing of minerals from or attributable to such Sand Interests; (c) all minerals in and under and which may be produced and saved or attributable to the Sand Interests, including all work in process and sand extracted from and/or processed from the Sand Interests and in storage, and all rents, issues, profits, proceeds, products, revenues and other incomes from or attributable to the Sand Interests; (d) all tenements, hereditaments, appurtenances and Properties in any manner appertaining, belonging, affixed or incidental to the Sand Interests and (e) all Properties, rights, titles, interests and estates described or referred to above, including any and all Property, real or personal, now owned or hereinafter acquired and situated upon, used, held for use or useful in connection with the operating, working or development of any of such Sand Interests or Property and including any and all buildings, structures, plants, compressors, pumps, conveyors, dryers, silos and other storage facilities, transloading equipment, rail equipment, infrastructure, tanks and tank batteries, fixtures, valves, fittings, machinery and parts, engines, boilers, meters, apparatus, equipment, appliances, tools, implements, cables, wires, mobile excavation equipment, automobiles, trucks, rental equipment or other personal Property which may be on such premises for the purpose of excavation, processing, transport, storage or for other similar uses, surface leases, rights-of-way, easements and servitudes together with all additions, substitutions, replacements, accessions and attachments to any and all of the foregoing. Unless otherwise indicated herein, each reference to the term "Sand Properties" shall mean Sand Properties of the Loan Parties.

"**SEC**" means the Securities and Exchange Commission or any successor Governmental Authority.

"**Second Incremental Offer Deadline**" has the meaning assigned to such term in Section 2.07(b)(iii).

"**Second Offer**" has the meaning assigned such term in Section 3.02(e).

"**Secured Parties**" means the Administrative Agent, each Lender, each Indemnified Party and any legal owner, holder, assignee or pledgee of any of the Obligations.

"**Security Agreement**" means the Security Agreement dated as of the date hereof among the Borrower, the Subsidiary Guarantors and the Administrative Agent, pursuant to which each of the Borrower and the Subsidiary Guarantors grants Liens on, and a security interest in, such Person's personal property constituting Collateral (as defined therein) in favor of the Administrative Agent for the benefit of the Secured Parties to secure the Obligations.

"**Security Instruments**" means, collectively, the Guaranty Agreement, the Pledge Agreement, the Security Agreement, the Mortgages, the Blocked Account Control Agreements and all other agreements, instruments, mortgages, deeds of trust, control agreements, consents, certificates, and all other documents now or hereafter executed and delivered by the Borrower or any Guarantor (other than Swap Agreements or participation or similar agreements between any Lender and any other lender or creditor with respect to any Obligations pursuant to this Agreement) in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Obligations.

"**SOFR**" means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website on the immediately succeeding Business Day.

"**SOFR Administrator**" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"**SOFR Administrator's Website**" means the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"**Subsidiary**" means, with respect to any Person (the "**parent**") at any date, (a) any other Person the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as (b) any other Person of which (i) Equity Interests representing more than 50% of the equity or more than 50% of the ordinary voting power (irrespective of whether or not at the time Equity Interests of any other class or classes in such Person shall have or might have voting power by reason of the happening of any contingency) are or, (ii) in the case of a partnership, any general partnership interests are, or (iii) in the case of a limited liability company, the sole or managing member interests are, in each case, as of such date, owned, controlled or held by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless the context otherwise requires, any reference hereunder to "Subsidiary" shall mean a Subsidiary of the Borrower.

"**Subsidiary Guarantor**" means each Subsidiary that is a party to the Guaranty Agreement as a guarantor. The Subsidiary Guarantors as of the Effective Date are identified as such on Schedule 1.02B.[1]

"**Successor Company**" has the meaning assigned such term in Section 9.12.

"**Successor Parent**" has the meaning assigned such term in Section 9.12.

"**Supported QFC**" has the meaning assigned such term in Section 12.21.

"**Swap Agreement**" means any "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act entered into with an Approved Counterparty; *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 other Loan Parties shall be a Swap Agreement.

"**Swap Termination Value**" means, in respect of any Swap Agreement, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreement, (a) for any date on or after the date such Swap Agreement has been closed out and the termination value determined in accordance therewith, such termination value and (b) for any date prior to the date referenced in clause (a), the amount determined as the mark-to-market value for such Swap Agreement, as determined by (i) the Borrower in good faith, if no Event of Default has occurred and is continuing or (ii) the Administrative Agent in good faith, if otherwise, in each case in this clause (b), such mark-to-market value to be determined by the applicable party pursuant to and in accordance with the terms of such Swap Agreement based upon dealer quotations and/or such other applicable method specified therein for purposes of closeout termination value calculations.

[1] **NTD**: Schedule 1.02(B) to list each 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 United States 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 any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding) or other charges imposed by any Governmental Authority.

"**Term Loan Increase**" has the meaning assigned to such term in Section 2.07(a).

"**Term SOFR**" means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"**Tranche A Commitment**" means, with respect to each Tranche A Lender, the commitment of such Tranche A Lender to make Tranche A Loans prior to the Tranche A Commitment Expiration Date in the aggregate amount set forth for such Tranche A Lender on Annex I or in the most recent Assignment and Assumption or other documentation contemplated hereby executed by such Tranche A Lender.

"**Tranche A Commitment Expiration Date**" means the earlier to occur of (a) the date on which the Tranche A Commitments have been reduced to zero and (b) [___], 2022[2].

"**Tranche A Lender**" means each Lender that has a Tranche A Commitment or that has Tranche A Loans owing to it by the Borrower.

"**Tranche A Loan Availability Period**" means the period from and including the Effective Date to and including the Tranche A Commitment Expiration Date.

"**Tranche A Loans**" has the meaning assigned such term in Section 2.01(a).

"**Tranche A Maximum Amount**" means $[30,000,000].

"**Tranche A Note**" means a promissory note of the Borrower payable to any Tranche A Lender or its registered assigns, evidencing the Obligations of the Borrower to such Tranche A Lender resulting from Tranche A Loans made by such Tranche A Lender, substantially in the form of Exhibit A-1.

"**Tranche B Lender**" means each Lender that has Tranche B Loans owing to it by the Borrower.

"**Tranche B Loan**" has the meaning assigned such term in Section 2.01(b).

"**Tranche B Note**" means a promissory note of the Borrower payable to any Tranche B Lender or its registered assigns, evidencing the Obligations of the Borrower to such Tranche B Lender resulting from Tranche B Loans made by such Tranche B Lender, substantially in the form of Exhibit A-2.

[2] **NTD**: Insert date that is 18 months after the Effective Date.

"**Tranche C Lender**" means each Lender that has Tranche C Loans owing to it by the Borrower.

"**Tranche C Loan**" has the meaning assigned such term in Section 2.01(c).

"**Tranche C Note**" means a promissory note of the Borrower payable to any Tranche C Lender or its registered assigns, evidencing the Obligations of the Borrower to such Tranche C Lender resulting from Tranche C Loans made by such Tranche C Lender, substantially in the form of Exhibit A-3.

"**Transactions**" means, collectively, the funding (and deemed funding) of the Loans, the execution and delivery of the Loan Documents, the repayment of existing Debt, the payment of other fees and expenses contemplated hereby and the consummation of the other transactions described in the Chapter 11 Plan to occur on or prior to the Plan Effective Date.

"**UCC**" means the Uniform Commercial Code as in effect in the State of New York, or, where applicable to specific Property, any other relevant State.

"**UK Financial Institution**" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"**UK Resolution Authority**" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"**Unadjusted Benchmark Replacement**" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"**Unfunded Pension Liabilities**" has the meaning assigned to such term in Section 7.10(f).

"**Units Deemed Outstanding**" means, as of any date of determination, the number of Class A Units outstanding at such time.

"**USD LIBOR**" means the London interbank offered rate for U.S. dollars.

"**U.S. Special Resolution Regimes**" has the meaning assigned such term in Section 12.21.

"**U.S. Tax Compliance Certificate**" has the meaning assigned such term in Section 5.02(f).

"**Vehicle**" means all automobiles, trucks, truck tractors, trailers, semi-trailers, railcars or other motor vehicles or rolling stock (or other assets covered by a certificate of title law of any state).

"Vista Sand" means Lonestar Prospects, Ltd., a Texas limited partnership doing business as "Vista Sand".

"**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 or one or more of the Wholly-Owned Subsidiaries or are owned by the Borrower and one or more of the Wholly-Owned Subsidiaries.

"**Winkler Lease**" means that certain Lease Agreement, dated and effective as of April 28, 2017, by and between Vista Sand and Hogg Ranch, LLC., as amended by the First Amendment to Lease Agreement, effective as of April 28, 2017, as amended by the Second Amendment to Lease Agreement dated as of December 7, 2017, and as amended by the Third Amendment to Lease Agreement dated as of January 31, 2018.

"**Withholding Agent**" means any Loan Party or the Administrative Agent.

"**Write-Down and Conversion Powers**" means, (a) 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, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

"**Yield Differential**" has the meaning assigned to such term in Section 2.07(f)(ii).

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" as used in this Credit Agreement 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, supplemented, restated 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 shall be construed as referring to such law as amended, modified, 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. 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 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 financial statements are required to be delivered to the Lenders pursuant to Section 8.01(a); *provided* that (i) if at any time any change in GAAP would affect the computation of any financial ratio set forth in any Loan Document, and the Borrower or the Required

Lenders shall so request, the Administrative Agent and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to approval by the Required Lenders and the Borrower); *provided* that, until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP immediately prior to such change therein and (ii) the accounting for operating leases and financing or capital leases under GAAP as in effect on December 31, 2018 (including, without limitation, FASB Accounting Standards Codification 840) shall apply for the purposes of determining compliance with the provisions of this Agreement, including the definition of "Capital Leases" and obligations in respect thereof, notwithstanding any change in GAAP after such date which would have the effect of treating any lease properly accounted for as an operating lease prior to such accounting change as a financing or capital lease after giving effect to such accounting change.

Section 1.05. Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division or establishment of any series under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time and (c) each division and series of any Person shall be treated as a separate Person hereunder.

ARTICLE II
THE CREDIT FACILITIES

Section 2.01. Tranche A Commitments; Tranche B Loans; Tranche C Loans.

(a) Subject to the terms and conditions set forth in this Agreement, each Lender severally agrees to make one or more loans to the Borrower from time to time during the Tranche A Loan Availability Period (each such loan, a "**Tranche A Loan**"); *provided* that (i) the principal amount of any Tranche A Loan made by any Lender on the occasion of any Borrowing of Tranche A Loans shall not exceed the then-available Tranche A Commitment of such Lender (immediately prior to giving effect to the making of such Tranche A Loan) and (ii) the aggregate principal amount of all Tranche A Loans made by the Tranche A Lenders during the Tranche A Loan Availability Period shall not exceed the Tranche A Maximum Amount.

(b) On the Effective Date, pursuant to the Chapter 11 Plan, in lieu of repayment in full in cash of the principal amount of the DIP Loans owing to it (in its capacity as a DIP Lender) under the DIP Facility, each Tranche B Lender severally agrees to restructure and rearrange such DIP Loans as loans deemed to be issued by it hereunder (the "**Tranche B Loans**") at a rate equal to $1 of principal amount of Tranche B Loans for each $1 of principal amount of DIP Loans owing to it as of the Effective Date immediately prior to giving effect to this Agreement. Each Tranche B Lender agrees that, in accordance with the Chapter 11 Plan, the Tranche B Loans shall be deemed to be issued by each Tranche B Lender hereunder as of the Effective Date and shall be deemed to refinance the aggregate outstanding principal amount of the DIP Loans in full; provided, that, in accordance with the terms of the Chapter 11 Plan, all outstanding interest, fees, and expenses due to the DIP Lenders under the DIP Facility shall be due and payable in cash on the Effective Date. The principal amount of Tranche B Loans owing to each Tranche B Lender as of the Effective Date immediately after giving effect to this Agreement is set forth on Annex I. The aggregate principal amount of Tranche B Loans outstanding as of the Effective Date is $11,000,000.

(c) On the Effective Date, pursuant to the Chapter 11 Plan, each Tranche C Lender agrees to restructure and rearrange a portion of the Prepetition Term Loans owing to it (in its capacity as a Prepetition Lender) under the Prepetition Credit Agreement in the amount set forth opposite such Lender's name on Annex I as loans deemed to be issued by it hereunder on a dollar-for-dollar basis (the "**Tranche C Loans**"). Each Tranche C Lender agrees that, in accordance with the Chapter 11 Plan, the Tranche C Loans shall be deemed to be issued hereunder as of the Effective Date and, together with the other transactions contemplated on the Plan Effective Date pursuant to the Chapter 11 Plan, shall satisfy the Indebtedness (as defined in the Prepetition Credit Agreement) in full. The principal amount of Tranche C Loans owing to each Tranche C Lender as of the Effective Date immediately after giving effect to this Agreement is set forth on Annex I. The aggregate principal amount of Tranche C Loans outstanding as of the Effective Date is $50,000,000.

(d) Amounts repaid or prepaid in respect of the Loans may not be reborrowed.

Section 2.02. Method of Borrowing.

(a) To request a Borrowing of Tranche A Loans, the Borrower shall deliver to Administrative Agent a duly completed Borrowing Request Notice prior to 10:00 am (Central Time) five (5) Business Days before the date of the proposed Borrowing (or, in the case of a Borrowing of Tranche A Loans on the Effective Date, three (3) Business Days before the Effective Date).

(b) Upon receipt of a Borrowing Request Notice, the Administrative Agent shall promptly notify each Lender of the receipt thereof, and such Borrowing Request Notice shall not thereafter be revocable by the Borrower.

(c) Except as provided in Section 2.07, each Borrowing shall be in a minimum principal amount equal to the lesser of (x) $5,000,000 or a whole multiple of $1,000,000 in excess thereof (or, in the case of a Borrowing of Tranche A Loans on the Effective Date, $2,000,000 or a whole multiple of $1,000,000 in excess thereof) and (y) if undrawn Commitments of such Class to which such Borrowing relates are available, the remaining undrawn Commitments of such Class. Each Borrowing Request Notice shall specify (i) the requested date of the Borrowing (which shall be a Business Day), (ii) the principal amount of Loans to be borrowed, (iii) the Class of Loans to be borrowed and (iv) the location and number of the Borrower's account or such other account or accounts to which funds are to be disbursed.

(d) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing or make any other payment required under the Loan Documents.

(e) Not later than 12:00 p.m. (Central time) on the date of each Borrowing of Tranche A Loans and Incremental Loans, each Lender of the applicable Class shall make available the amount of its requested Loan in funds immediately available to the Administrative Agent at its address set forth herein. Unless the Administrative Agent determines that any applicable condition specified in Section 6.02 has not been satisfied, the Administrative Agent will make the funds so received from the applicable Lenders available to the Borrower at the Administrative Agent's aforesaid address.

Section 2.03. Notes. The Tranche A Loans of each Tranche A Lender shall be evidenced by a Tranche A Note payable to such Tranche A Lender. The Tranche B Loans of each Tranche B Lender shall be evidenced by a Tranche B Note payable to such Tranche B Lender. The Tranche C Loans of each

Tranche C Lender shall be evidenced by a Tranche C Note payable to such Tranche C Lender. Upon the request of any Incremental Term Lender, the Incremental Loans of such Lender shall be evidenced by a Note payable to such Lender in substantially the same form as the Tranche A Notes. Each Lender may attach schedules to its Note and record thereon the date, amount and maturity of its Loans and payments with respect thereto. Upon the payment in full of the Obligations evidenced by any Note, (i) such Note shall be deemed automatically cancelled and of no further force and effect and (ii) the Lender holding such Note shall, upon the Borrower's request, promptly surrender such Note to the Borrower.

Section 2.04. Interest Rates; Payments.

(a) The principal amount of the Loans outstanding from day to day shall bear interest (computed on the basis of actual days elapsed in a 360 day year, as applicable) at a rate per annum equal to the lesser of (x) the sum of the LIBO Rate plus the Applicable Margin and (y) the Highest Lawful Rate, payable in arrears on each Monthly Payment Date and on the Maturity Date. On each Monthly Payment Date, unless the Borrower affirmatively elects to pay such accrued interest (or any portion thereof) in cash by written notice to the Administrative Agent in accordance with Section 2.04(d), interest required to be paid on the outstanding principal amount of each Class of Loans on such Monthly Payment Date and not paid in cash shall be paid by the Borrower in kind by increasing the outstanding principal amount of each Class of Loans on the relevant Monthly Payment Date by the applicable PIK Interest Amount payable with respect to such Class of Loans on such date. On each Monthly Payment Date for which the Borrower has elected to pay interest in cash by notice to the Administrative Agent in accordance with Section 2.04(d), the portion of accrued interest elected by the Borrower to be paid in cash shall be paid in cash. Unless the context otherwise requires, for all purposes hereof, references to the "outstanding principal amount" or the "principal amount outstanding" of the Loans includes any PIK Interest that is added to the principal amount of the Loans from the date on which such interest has been so added.

(b) Notwithstanding anything to the contrary set forth in Section 2.04(a), upon the occurrence and during the continuance of an Event of Default, the Administrative Agent or the Required Lenders may, at their option, by notice to the Borrower (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 12.02 requiring the consent of "each Lender directly affected thereby" for reductions in interest rates) declare that the Obligations (whether or not accelerated) shall bear interest (including post-petition interest in any proceeding under Debtor Relief Laws, whether or not allowed in such a proceeding), at a rate per annum equal to the lesser of (i) the sum of (A) the rate provided for in Section 2.04(a) plus (B) 4.0% per annum and (ii) the Highest Lawful Rate. Interest payable as provided in this Section shall be payable in cash from time to time on demand. Payment or acceptance of the increased rates of interest provided for in this Section is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Administrative Agent or any Lender.

(c) Notwithstanding the foregoing, if at any time the rate of interest calculated hereunder (as used in this sub-section, the "contract rate") is limited to the Highest Lawful Rate, any subsequent reductions in the contract rate shall not reduce the rate of interest on the Loans below the Highest Lawful Rate until the total amount of interest accrued equals the amount of interest which would have accrued if the contract rate had at all times been in effect. In the event that at maturity (stated or by acceleration), or at final payment of any Loan, the total amount of interest paid or accrued on such Loan is less than the amount of interest which would have accrued if the contract rate had at all times been in effect with respect thereto, then at such time, to the extent permitted by Law, the Borrower shall pay to the holder of such Loan an amount equal to the difference between (i) the lesser of the amount of interest which would have accrued if the contract rate had at all times been in effect and the amount of interest which would have

accrued if the Highest Lawful Rate had at all times been in effect, and (ii) the amount of interest actually paid on such Loan.

(d) Prior to the applicable Monthly Payment Date, the Borrower shall inform the Administrative Agent by written notice of its intention to make payments of accrued interest in cash, in kind or any combination of the foregoing; *provided* that if the Borrower fails to provide such notice to the Administrative Agent, the Borrower shall be deemed to have elected to make payments of accrued interest in kind in accordance with Section 2.04(a).

Section 2.05. Mandatory Termination of Tranche A Commitments; Maturity.

(a) On the date of each Borrowing of Tranche A Loans, the portion of the Tranche A Commitments being funded pursuant to such Borrowing shall terminate immediately upon the funding of such Tranche A Loans pursuant to such Borrowing.

(b) The outstanding principal balance of the Loans and all accrued but unpaid interest thereon shall be due and payable in full on the Maturity Date.

Section 2.06. Application of Payments.

(a) Prior to the occurrence of an Event of Default, all principal payments with respect to the Loans of any Class shall be applied to the Loans of each Lender in such Class ratably in accordance with the amounts thereof.

(b) After the occurrence of an Event of Default, all amounts collected or received by Administrative Agent or any Lender from any Loan Party or in respect of any proceeds of Collateral shall be applied in the following order:

(i) *first*, to the payment or reimbursement of that portion of the Obligations constituting fees, indemnities, expenses and other amounts payable to the Administrative Agent in its capacity as such (including fees, expenses, and disbursements of counsel to the Administrative Agent) and all amounts due the Administrative Agent under Section 12.03;

(ii) *second*, to the payment or reimbursement of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest) payable to the Lenders (including fees, expenses, and disbursements of counsel to the Lenders) ratably among them in proportion to the respective amounts described in this clause second payable to them;

(iii) *third*, ratably to the payment of (A) accrued and unpaid interest on the Incremental Term Loans (if any) and (B) unpaid principal of the Incremental Term Loans, ratably among the Incremental Term Lenders in proportion to the respective amounts described in this clause third payable to them;

(iv) *fourth,* ratably to the payment of (A) accrued and unpaid interest on the Tranche A Loans and (B) unpaid principal of the Tranche A Loans, ratably among the Tranche A Lenders in proportion to the respective amounts described in this clause fourth payable to them;

(v) *fifth*, to (A) accrued and unpaid interest on the Tranche B Loans and (B) unpaid principal of the Tranche B Loans, ratably among the Tranche B Lenders in proportion to the respective amounts described in this clause fifth payable to them;

(vi) *sixth*, to (A) accrued and unpaid interest on the Tranche C Loans and (B) unpaid principal of the Tranche C Loans, ratably among the Tranche C Lenders in proportion to the respective amounts described in this clause sixth payable to them;

(vii) *seventh,* ratably to the payment of any other Obligations; and

(viii) *last*, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by applicable Governmental Requirements.

Section 2.07. Incremental Borrowings.

(a) *Incremental Commitments*. The Borrower may at any time or from time to time, on one or more occasions after the Tranche A Commitment Expiration Date, by written notice to the Administrative Agent (an "**Incremental Loan Request**"), request one or more new commitments to be provided hereunder ("**Incremental Term Commitments**"), which may be in the same Class as any outstanding Loans of an existing Class (a "**Term Loan Increase**") or a new Class of Loans. Upon receiving an Incremental Loan Request, the Administrative Agent shall promptly deliver a copy of such Incremental Loan Request to each of the Lenders.

(b) *Incremental Loan Request*.

(i) Each initial Incremental Loan Request from the Borrower delivered pursuant to this Section 2.07 shall set forth the requested aggregate principal amount of the Incremental Term Loans, the aggregate principal amount requested from each Tranche A Lender other than any Defaulting Lenders (which shall be in an amount equal to such Tranche A Lender's pro rata portion of the aggregate principal amount of the requested Incremental Term Loans) and the proposed material terms of the relevant Incremental Term Loans. Incremental Term Loans may be made by any then-existing Tranche A Lender that is not a Defaulting Lender (but no existing Tranche A Lender will have any obligation to make any Incremental Term Commitment) or, subject to the conditions set forth in this Section 2.07, by any other Person that is not a Disqualified Lender, Defaulting Lender, natural person or Loan Party (such other Person being called an "**Additional Lender**") (each such existing Lender or Additional Lender providing Incremental Term Commitments, an "**Incremental Term Lender**"); *provided* that the Administrative Agent shall have consented (not to be unreasonably withheld or delayed) to such Lender's or Additional Lender's making such Incremental Term Loans to the extent such consent, if any, would be required under Section 12.04(b) for an assignment of Loans to such Lender or Additional Lender.

(ii) Any Tranche A Lender that agrees to provide its pro rata portion of the aggregate principal amount of the requested Incremental Term Loans shall give written notice thereof to the Administrative Agent by 10:00 a.m. (Central time) no later than [**five (5)**] Business Days after the date of such notice from the Administrative Agent (the "**First Incremental Offer Deadline**") and, on such date the Administrative Agent shall provide notice to the Borrower and the Tranche A Lenders of the aggregate principal amount of the requested Incremental Term Loans that have been accepted by the Tranche A Lenders as of such date (each such Tranche A Lender that has agreed to accept its pro rata portion of the requested Incremental Term Loans, an "**Incremental Accepting Tranche A Lender**"); provided that if any Tranche A Lender fails to respond to the Administrative Agent in writing by the First Incremental Offer Deadline, such Tranche A Lender shall be deemed to have not accepted the Incremental Loan Request (the portion of the requested Incremental Term Loans not accepted by any Tranche A Lender, the "**Excess Requested Incremental Term Loans**"). Additionally, if any Excess Requested Incremental Term

Loans exist on the date of the First Incremental Offer Deadline, (A) the Administrative Agent shall notify the Borrower and the Tranche A Lenders of the aggregate principal amount (if any) of Excess Requested Incremental Term Loans and (B) the Borrower shall deliver an Incremental Loan Request to the members of the Parent that hold Class A Units (other than any such member that is a Lender or an Affiliate of a Lender), if any, setting forth the requested aggregate principal amount of the Incremental Term Loans, the aggregate principal amount requested from each such member of the Parent that holds Class A Units (which shall be in an amount equal to such member's pro rata portion of the aggregate principal amount of the Excess Requested Incremental Term Loans, calculated based on such member's proportional ownership of all Class A Units then outstanding) and the proposed terms of the relevant Incremental Term Loans.

(iii) Any such member of the Parent that holds Class A Units and that agrees to provide its pro rata portion of the aggregate principal amount of the Excess Requested Incremental Term Loans shall give written notice thereof to the Administrative Agent by 10:00 a.m. (Central time) no later than five (5) Business Days after the date of such notice from the Borrower (the "**Second Incremental Offer Deadline**") and, on such date the Administrative Agent shall provide notice to the Borrower and the Tranche A Lenders of the aggregate principal amount of the Excess Requested Incremental Term Loans that have been accepted by such members of the Parent as of such date; provided that if any such member fails to respond to the Administrative Agent in writing by the Second Incremental Offer Deadline, such member shall be deemed to have rejected the Incremental Loan Request. If any portion of the Excess Requested Incremental Term Loans are not accepted by such members of the Parent in accordance with the terms hereof, then such portion of the Excess Requested Incremental Term Loans shall be offered to the Incremental Accepting Tranche A Lenders on a pro rata basis and, if such Accepting Tranche A Lenders fail to accept any such portion of the Excess Requested Incremental Term Loans within 5 Business Days after receipt of such offer, thereafter, any remaining portion of the Excess Requested Incremental Term Loans not accepted by such Incremental Accepting Tranche A Lenders may be offered by the Borrower to an Additional Lender.

(c) *Incremental Loans*. Any new Loans made on an Incremental Facility Closing Date shall be designated a separate Class of Loans for all purposes of this Agreement, except in the case of a Term Loan Increase. On any Incremental Facility Closing Date on which any Incremental Term Commitments of any Class are effected (including through any Term Loan Increase), subject to the satisfaction of the terms and conditions in this Section 2.07, (i) each Incremental Term Lender of such Class shall make a Loan to the Borrower (an "**Incremental Term Loan**") in an amount equal to its Incremental Term Commitment of such Class, and (ii) each Incremental Term Lender of such Class shall become a Lender hereunder with respect to the Incremental Term Commitment of such Class and the Incremental Term Loans of such Class made pursuant thereto. Notwithstanding the foregoing, Incremental Term Loans may have identical terms to any of the Loans and be treated as the same Class as any of such Loans.

(d) *Incremental Amendment*. Commitments in respect of Incremental Term Loans shall become Commitments under this Agreement pursuant to an amendment (an "**Incremental Amendment**") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Incremental Term Lender providing such Commitments and the Administrative Agent. The Incremental Amendment may, without the consent of any other Loan Party, the Administrative Agent or any Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.07. The Borrower may use the proceeds of the Incremental Term Loans for any purpose not prohibited by this Agreement. No Lender shall be obligated to provide any Incremental Term Loans, unless it so agrees.

(e) *Effectiveness of Incremental Amendment*. The effectiveness of any Incremental Amendment, and the Incremental Term Commitments thereunder, shall be subject to the satisfaction on the date thereof (the "**Incremental Facility Closing Date**") of each of the following conditions:

(i) the Tranche A Commitment Expiration Date shall have occurred;

(ii) after giving effect to such Incremental Term Commitments:

(A) the representations and warranties of the Loan Parties 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 Incremental Amendment, except that (i) to the extent any such representations and warranties are expressly limited to an earlier date, then on and as of the date of Incremental Amendment, 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 representation and warranty is qualified by materiality, such representation and warranty shall continue to be true and correct in all respects; and

(B) no Default or Event of Default shall exist and be continuing or would immediately result from such proposed Incremental Term Commitment or from the application of the proceeds therefrom;

(iii) each Incremental Term Commitment shall be in an aggregate principal amount that is not less than $1,000,000 and shall be in an increment of $250,000 (provided that such amount may be less than $1,000,000 if such amount represents all remaining availability under the limit set forth in clause (iv) below); and

(iv) the aggregate principal amount of the Incremental Term Loans shall not exceed $30,000,000 *less* the aggregate principal amount of Debt previously incurred pursuant to this Section 2.07; and

(v) such other conditions as the Borrower, each Incremental Term Lender providing such Incremental Term Commitments and the Administrative Agent shall agree.

(f) *Required Terms*. The terms, provisions and documentation of the Incremental Term Loans and Incremental Term Commitments of any Class, except as otherwise set forth herein, shall be as agreed between the Borrower and the applicable Incremental Term Lenders providing such Incremental Term Commitments; provided that, to the extent such Incremental Term Commitments are not consistent with the Tranche A Loans existing on the Incremental Facility Closing Date (except to the extent permitted by this Section 2.07), the terms of such Incremental Term Commitments shall be reasonably satisfactory to Administrative Agent. In any event:

(i) the Incremental Term Loans:

(A) shall rank senior in right of payment and of security with respect to the Tranche A Loans, the Tranche B Loans or the Tranche C Loans,

(B) shall mature on the Maturity Date,

(C) [Reserved],

(D) shall have an Applicable Margin and amortization determined by the Borrower and the applicable Incremental Term Lenders,

(E) the Incremental Term Loans may not be incurred (or guaranteed) by any Person that is not a Loan Party or secured by assets that do not constitute Collateral,

(F) mandatory prepayments of the Incremental Term Loans shall be on a pro rata or less than pro rata basis, except that the Borrower shall be permitted to prepay any Class of Loans on a better than pro rata basis as compared to any other Class of Loans with a later maturity date than such Class; and

(ii) the amortization schedule applicable to any Incremental Term Loans and the All-In Yield applicable to the Incremental Term Loans of each Class shall be determined by the Borrower and the applicable new Lenders and shall be set forth in each applicable Incremental Amendment; *provided*, *however*, if the All-In Yield applicable to such Incremental Term Loans shall be greater than the applicable All-In Yield payable pursuant to the terms of this Agreement as amended through the date of such calculation with respect to the then-outstanding Loans (the amount of such excess of the All-In Yield applicable to such Incremental Term Loans over the All-In Yield applicable to the then-outstanding Loans, the "**Yield Differential**"), then the interest rate (together with, as provided in the proviso below, the Eurodollar or "base rate" floor) with respect to the then-outstanding Loans shall be increased by the applicable Yield Differential; *provided*, *further*, that, if any Incremental Term Loans include a Eurodollar or "base rate" floor that is greater than the Eurodollar or "base rate" floor applicable to any existing Class of Loans, such differential between Eurodollar or "base rate" floors, as applicable, shall be included in the calculation of All-In Yield for purposes of this clause (ii) but only to the extent an increase in the Eurodollar or "base rate" floor applicable to the existing Loans would cause an increase in the interest rate then in effect thereunder, and in such case the Eurodollar or "base rate" floors (but not the Applicable Margin) applicable to the existing Loans shall be increased to the extent of such differential between the Eurodollar or "base rate" floors as the case may be.

(g) This Section 2.07 shall supersede all provisions in Section 4.01 and Section 12.02 to the contrary.

Section 2.08. OID. On the date of any Borrowing of Tranche A Loans (including the Effective Date), each Tranche A Lender will fund its applicable Tranche A Loan net of an amount equal to a percentage, set forth in the Fee Letter, of such Tranche A Lender's pro rata portion of Tranche A Loans requested by the Borrower to be made available on such date of Borrowing. Such discount shall be treated as original issue discount for U.S. federal and applicable state income tax purposes. Notwithstanding any other provision in this Agreement, the Borrower shall comply with the requirements of Treasury Regulation Section 1.1275-3 and shall provide any information reasonably requested by the Administrative Agent or any Lender regarding the amount or accrual of original issue discount for U.S. federal income tax purposes with respect to any amounts borrowed hereunder.

Section 2.09. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then, for so long as such Lender is a Defaulting Lender, the Commitment of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 12.02); provided that, except as otherwise provided in Section 12.02, this Section 2.09 shall not apply to the vote of a Defaulting Lender in the case of an

amendment, waiver or other modification requiring the consent of such Lender or each Lender directly affected thereby.

ARTICLE III
REPAYMENTS; PREPAYMENTS

Section 3.01. Repayment of Obligations.

(a) [Reserved.]

(b) If any principal or interest amount payable on the Loans remains outstanding at the Maturity Date, such amount shall be paid in full by the Borrower to the Lenders in immediately available funds on the Maturity Date.

Section 3.02. Mandatory Prepayments.

(a) *Debt Issuance; Asset Sale; Recovery Event*. Unless the Required Lenders shall otherwise agree, if (i) any Debt (excluding any Debt permitted pursuant to Section 9.03) shall be incurred by the Borrower or any Subsidiary, or (ii) any Asset Sale by any Loan Party or Recovery Event shall occur, then (I) the Borrower will promptly notify the Administrative Agent and (II) within ten (10) Business Days following the receipt of the Net Cash Proceeds of such incurrence or Asset Sale, the Borrower shall prepay the principal amount of the Loans in an amount equal to the amount of the Net Cash Proceeds of such incurrence or Asset Sale; provided, however, that, upon written notice by the Borrower to the Administrative Agent not less than five (5) Business Days after the date of receipt of any Net Cash Proceeds, such proceeds may be retained by the Borrower and its Subsidiaries (and be excluded from the prepayment requirements of this clause) if (x) the Borrower informs the Administrative Agent in such notice of its good faith intention to apply (or cause one or more of its Subsidiaries to apply) such Net Cash Proceeds in the business of the Borrower and its Subsidiaries or to use such Net Cash Proceeds to repair or replace the affected assets of the Borrower or any Subsidiary, (y) within 180 days following the receipt of such Net Cash Proceeds, such proceeds are either applied in the business of the Borrower or its Subsidiaries or to such acquisition or repair or the Borrower or a Loan Party has entered into a bona fide binding contract not prohibited by this Agreement committing to apply such Net Cash Proceeds in the business of the Borrower or its Subsidiaries with a Person other than a Loan Party or any Affiliate of a Loan Party and such Net Cash Proceeds are subsequently applied in accordance with such contract within ninety (90) days after the date such agreement is entered into and (z) if such proceeds are not applied in the business of the Borrower or its Subsidiaries or to such acquisition or repair in accordance with the foregoing, the Borrower shall prepay the principal amount of the Loans in an amount equal to the amount of such proceeds not so applied. The provisions of this Section 3.02(a) do not constitute a consent to the incurrence of any Debt or any Asset Sale not otherwise permitted by the terms hereof.

(b) *Purchase Price Refund*. Unless the Required Lenders shall otherwise agree, if on any date any Loan Party shall receive a Purchase Price Refund which yields aggregate proceeds to any Loan Party or any of its Subsidiaries in excess of $5,000,000, then, not less than five (5) Business Days after the date of receipt by such Person of such Purchase Price Refund, the Borrower shall prepay the principal amount of the Loans in an amount equal to the amount of such Purchase Price Refund. The provisions of this Section 3.02 do not constitute a consent to the consummation of any disposition of Property or series of related dispositions of Property not permitted by the terms of this Agreement.

(c) [Reserved.]

(d) Each prepayment pursuant to this Section 3.02 shall be applied in accordance with Section 2.06 and on a pro rata basis, and shall be accompanied by payment of accrued interest to the Prepayment Date on the principal amount prepaid.

(e) Each Lender, in its sole discretion, may, but is not obligated to, decline the Borrower's prepayment pursuant to Section 3.02(a)(ii), in each case, with respect to such Lender's pro rata share of such prepayment. Promptly after the date of receipt of the notice required by clause (a)(ii)(II) of this Section 3.01(a), the Administrative Agent shall provide written notice (the "**First Offer**") to the Lenders of the amount available to prepay the Loans within one (1) Business Day of receipt of the applicable notice. Any Lender declining such prepayment (a "**Declining Lender**") shall give written notice thereof to the Administrative Agent by 10:00 a.m. (Central time) no later than five (5) Business Days after the date of such notice from the Administrative Agent (the "**First Offer Deadline**") and on such date the Administrative Agent shall provide notice to the Borrower of the aggregate amount accepted for prepayment pursuant to the First Offer. The Borrower shall prepay the Loans accepted for prepayment pursuant to the First Offer no later than the date specified for such prepayment in the First Offer in the amount set forth in the applicable notice from the Administrative Agent. Additionally, on the First Offer Deadline (or earlier if the Administrative Agent has received responses from all Lenders) the Administrative Agent shall then provide written notice (the "**Second Offer**") to the Lenders other than the Declining Lenders (such Lenders being the "**Accepting Lenders**") of the additional amount available (due to such Declining Lenders' declining such prepayment) to prepay Loans owing to such Accepting Lenders, such available amount to be allocated on a pro rata basis among the Accepting Lenders that accept the Second Offer. Any Lenders declining prepayment pursuant to such Second Offer shall give written notice thereof to the Administrative Agent by 10:00 a.m. (Central time) no later than five (5) Business Days after the date of such notice of a Second Offer. The Borrower shall prepay the Loans accepted for prepayment pursuant to the Second Offer within one Business Day after its receipt of notice from the Administrative Agent of the aggregate amount of such prepayment. Amounts remaining after the allocation of accepted amounts with respect to the First Offer and the Second Offer to Accepting Lenders shall be retained by the Borrower.

Section 3.03. Voluntary Prepayments.

(a) The Borrower may, subject to Section 3.03(b) and the other provisions of this Agreement, upon not less than fifteen (15) Business Days' advance notice (or such shorter period as may be approved by the Administrative Agent in its sole discretion) to the Administrative Agent (who shall promptly notify each Lender), prepay the principal of the Loans in whole or in part. Any partial prepayment shall be in a minimum amount of $1,000,000 and shall be in an integral multiple of $500,000; provided that, to the extent the Borrower elects to partially prepay the Tranche A Loans with cash received from, or on behalf of, the Litigation Trust as repayment of the Litigation Trust Loan, such partial prepayment shall be in a minimum amount equal to such amount received by the Borrower from, or on behalf of, the Litigation Trust.

(b) Unless the Borrower has obtained the consent of the Required Lenders, no prepayment of the Tranche B Loans or the Tranche C Loans will be permitted until the outstanding Tranche A Loans have been repaid in full and no prepayment of the Tranche C Loans will be permitted until the outstanding Tranche A Loans and the outstanding Tranche B Loans have been repaid in full.

(c) Each prepayment pursuant to this Section 3.03 shall be applied as directed by the Borrower in accordance with Section 3.03(b) and shall be accompanied by payment of accrued interest to the Prepayment Date on the principal amount prepaid.

(d) *Automatic Conversion*.

(i) Subject to the provisions of this Section 3.03(d), at the election of the Borrower, in connection with, and immediately prior to the closing of, a Qualified Sale Transaction, the Converting Debt shall automatically convert (without any further action by the Lenders) into an aggregate number of new Class A Units (including any fraction of a Unit) as is determined by (i) dividing the Units Deemed Outstanding by the Converting Debt Percentage, and then (ii) subtracting from the result the Units Deemed Outstanding, with each Lender (or its designee) receiving its *pro rata* share of such new Class A Units based upon such Lenders' *pro rata* share of such Converting Debt immediately prior to such conversion (collectively, the "**Debt Conversion**").

(ii) As promptly as practicable following entry into a definitive agreement for such Qualified Sale Transaction (but in any event not less than **[five (5)]** Business Days prior to the scheduled closing therefor), if the Borrower desires to effect the Debt Conversion, the Borrower shall send each Lender written notice of such event and the Borrower's election to effect the Debt Conversion. Promptly upon receipt of such notice but in any event on or prior to the effectiveness of such Qualified Sale Transaction, if requested by the Borrower, (x) each Lender shall promptly surrender to the Borrower any Notes in the possession of such Lender, (y) if such Lender (or its designee) is not a member of Parent at such time, such Lender shall execute and deliver a Member Joinder and (z) the Administrative Agent and each other Lender shall execute and deliver any other documentation reasonably requested by the Borrower to evidence the Debt Conversion, the termination of all outstanding Commitments and Obligations hereunder and the release of all Liens securing the Obligations on the Collateral (collectively, the "**Conversion Documentation**"). Upon receipt of the Conversion Documentation, the Borrower shall as promptly as practicable cause Parent to update Schedule A to the Parent LLC Agreement to reflect (A) the admission of each Lender (or such Lender's designee) as a member of Parent (if such Lender (or designee) is not already a member), and (B) the issuance to each such Lender (or Lender's designee) of the number of new Class A Units (including any fractional Units) to which such Lender (or Lender's designee) shall be entitled upon conversion as calculated pursuant to Section 3.03(d)(i). All Class A Units issued by Parent in connection with the foregoing shall be duly and validly issued, fully paid, and nonassessable, free and clear of all taxes, liens, charges, and encumbrances with respect to the issuance thereof.

(iii) Upon the Debt Conversion and notwithstanding anything herein or in any other Loan Document to the contrary, (A) all Obligations hereunder shall be deemed to be repaid in full and discharged, (B) all unfunded commitments of the Lenders to make Loans or otherwise extend credit to the Borrower under this Agreement (including all outstanding Commitments) shall be automatically terminated, (C) all guarantees granted to the Lenders or the Administrative Agent as a guarantee for the Obligations shall be released and discharged, (D) all Loan Documents shall terminate and have no further force or effect, except for those provisions that expressly survive the respective agreement's termination or the repayment of Loans or other amounts payable under this Agreement or in any other Loan Document and (E) the Lenders hereby expressly authorize the Administrative Agent to execute and deliver any and all documentation reasonably requested by the Borrower to effect or to otherwise evidence the foregoing.

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. Subject to Section 3.03(d), the Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees, or of amounts payable under Section 5.01, Section 5.02 or otherwise) prior to 12:00 p.m., Central 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 at its offices specified in Section 12.01, except that payments pursuant to Section 5.01, Section 5.02 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, 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 and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amount of principal then due to such parties.

(c) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of, or interest on, any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary 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; *provided* that (i) 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 (ii) the provisions of this Section 4.01(c) shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or 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, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this Section 4.01(c) shall apply). The Borrower 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 the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

Section 4.02. Presumption of Payment by the Borrower. 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 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, 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, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender 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 rate then applicable to the Loans.

Section 4.03. Disposition of Proceeds. The Mortgages contain an assignment by the Loan Parties that are party thereto unto and in favor of the Administrative Agent, for the benefit of the Secured Parties, of all of such Loan Parties' interest in and to production and all proceeds attributable thereto which may be produced from or allocated to the Mortgaged Property. The Security Instruments further provide in general for the application of such proceeds to the satisfaction of the Obligations and other obligations described therein and secured thereby. Notwithstanding the assignment contained in such Security Instruments, until the occurrence of an Event of Default, (a) the Administrative Agent and the Lenders agree that they will neither notify the purchaser or purchasers of such production nor take any other action to cause such proceeds to be remitted to the Administrative Agent or the Lenders, but the Administrative Agent and the Lenders will instead permit such proceeds to be paid to the applicable Loan Parties and the applicable lessor and (b) the Lenders hereby authorize the Administrative Agent to take such actions as may be necessary to cause such proceeds to be paid to the applicable Loan Parties and the applicable lessor.

ARTICLE V
INCREASED COSTS; TAXES; ILLEGALITY

Section 5.01. Increased Costs.

(a) Changes in Law. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender; or

(ii) impose on any Lender any other condition affecting this Agreement or 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 Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or otherwise), *then* 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 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 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 or 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. As promptly as practical, after a Lender obtains knowledge of the facts that entitle it to compensation under this Section 5.01, but in any event within ninety (90) days after such Lender acquires such knowledge, such Lender shall provide Borrower with a certificate which identifies the factual basis for its claim, the amount or amounts that such Lender has reasonably determined will compensate hereunder, and the manner in which such amount or amounts have been calculated. Any Lender claiming additional compensation under this Section 5.01 shall use reasonable efforts (consistent with legal and regulatory restrictions) to reduce or eliminate any such additional compensation which may thereafter accrue and which efforts would not, in the sole discretion of such Lender, be otherwise. A

certificate setting forth the basis for determining such amounts necessary to compensate such Lender (including the calculations used to arrive at such additional amounts and the assumptions on which such calculations were based), submitted to the Borrower by the Administrative Agent, shall be conclusive evidence, absent manifest error, of the correctness of such amount. The Borrower shall pay such Lender the amount shown as due on any such certificate within 20 Business 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 or reductions incurred more than 180 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 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 5.02. 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, including any Indemnified Taxes or Other Taxes; *provided* that if the Borrower or any Guarantor shall be required under applicable law to deduct any Taxes from such payments, then (i) if such Taxes are an Indemnified Tax 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 5.02(a)), the Administrative Agent or Lender (as the case may be) 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 pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by the Borrower. 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 10 Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes payable or paid by 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 (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 5.02) 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 of the Administrative Agent or a Lender as to the amount of such payment or liability under this Section 5.02 shall be delivered to the Borrower and shall be conclusive absent manifest error; *provided* that the Borrower shall not have any obligation to indemnify the Administrative Agent or such Lender for any amounts paid by the Administrative Agent or such Lender under this Section 5.02 more than two years prior to the date the Administrative Agent or such Lender notifies the Borrower of the amount of such payment.

(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 the 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(c) 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 Taxes by the Borrower or a Guarantor to a Governmental Authority pursuant to this Section 5.02, 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 any Loan Document shall deliver to the Withholding Agent, at the time or times reasonably requested by the Withholding Agent, such properly completed and executed documentation reasonably requested by the Withholding Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably 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 Section 5.02(f)(ii)(A) and (ii)(B) and Section 5.02(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)(3) 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 reasonable 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), 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 the applicable IRS Form W-8 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, the applicable IRS Form W-8 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 F-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 equityholder" 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 (together with any certificate substantially in the form of Exhibit F-2, F-3, or F-4, a "**U.S. Tax Compliance Certificate**") and (y) executed originals of IRS Form W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by the applicable IRS Form W-8 or 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 F-4 on behalf of each such direct and indirect partner; and

(C) 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) 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 and to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 5.02(g), "**FATCA**" shall include any amendments made to FATCA after the date of this Agreement.

(h) Survival. Each party's obligations under this Section 5.02 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 any Loan Document.

Section 5.03. Mitigation Obligations. Each Lender may make any Loans to the Borrower through any Lending Office, *provided* that the exercise of this option shall not affect the obligation of the Borrower to repay Loans in accordance with the terms of this Agreement. 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 5.02, 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 reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 5.01 or Section 5.02, 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.

Section 5.04. 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 Loans, then such Lender shall promptly notify the Borrower and the Administrative Agent thereof and such Lender's obligation to make such Loans shall be suspended (the "**Affected Loans**") until such time as such Lender may again make and maintain such Loans.

Section 5.05. Benchmark Replacement Setting.

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(b) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(c) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (d) below. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 5.05 including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 5.05.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

ARTICLE VI
CONDITIONS PRECEDENT

Section 6.01. Effective Date. This Agreement and the obligations of the Lenders to make Loans hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 12.02):

(a) the Administrative Agent and the Lenders shall have received all commitment, facility, structuring and agency fees and all other fees and amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all reasonable out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder (including, without limitation, the reasonable fees and expenses of Sidley Austin LLP, counsel to the Administrative Agent);

(b) the Administrative Agent shall have received a certificate of the Secretary, an Assistant Secretary or other officer of each Loan Party setting forth (i) resolutions of its board of directors

(or comparable governing body) 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) the officers of such Loan Party (y) who are authorized to sign the Loan Documents to which such Loan Party is a party and (z) 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 this Agreement and the transactions contemplated hereby, (iii) specimen signatures of such authorized officers, (iv) the Organizational Documents of such Loan Party, certified as being true and complete and (v) a list of the officers and directors of each Loan Party. The Administrative Agent and the Lenders may conclusively rely on such certificate until the Administrative Agent receives notice in writing from the Borrower to the contrary;

(c) the Administrative Agent shall have received certificates of the appropriate State agencies with respect to the existence, qualification and good standing of each Loan Party;

(d) the Administrative Agent shall have received from each party hereto counterparts (in such number as may be reasonably requested by the Administrative Agent) of this Agreement signed on behalf of each party thereto;

(e) the Administrative Agent shall have received (i) a duly executed Tranche A Note payable to the order of each Tranche A Lender in the principal amount equal to such Lender's Tranche A Loans and/or Tranche A Commitments dated as of the date hereof, (ii) a duly executed Tranche B Note payable to the order of each Tranche B Lender in the principal amount equal to such Lender's Tranche B Loans dated as of the date hereof and (iii) a duly executed Tranche C Note payable to the order of each Tranche C Lender in the principal amount equal to such Lender's Tranche C Loans dated as of the date hereof;

(f) the Administrative Agent shall have received from each party thereto duly executed counterparts (in such number as may be reasonably requested by the Administrative Agent) of the Security Instruments required as of the Effective Date, including the Pledge Agreement, the Security Agreement and the Guaranty Agreement. In connection with the execution and delivery of such Security Instruments, the Administrative Agent shall be reasonably satisfied that the Security Instruments will, when properly recorded (or when the applicable financing statements related thereto are properly filed or such other actions needed to perfect are taken) create perfected Liens (subject only to Excepted Liens identified in clauses (a) to (c) of the definition thereof, but subject to the provisos at the end of such definition) on the Property purported to be pledged as Collateral pursuant to the Security Instruments;

(g) the Administrative Agent shall have received from each party thereto duly executed counterparts of the Fee Letter;

(h) the Administrative Agent shall have received an opinion of Haynes and Boone, LLP, special counsel to the Borrower, in form and substance reasonably acceptable to the Administrative Agent and its counsel;

(i) the Administrative Agent shall have received a certificate of insurance coverage of the Loan Parties evidencing that the Loan Parties are carrying insurance reasonably acceptable to the Administrative Agent;

(j) the Administrative Agent shall be reasonably satisfied with the environmental condition of the Sand Properties of the Loan Parties;

(k) the Administrative Agent and the Lenders shall have received cash projections of the Borrower and its Subsidiaries through December 31, 2021 prepared by management of the Borrower, in form and substance satisfactory to the Administrative Agent;

(l) on the Effective Date, none of the Loan Parties shall have any Debt (other than the Obligations or other Debt permitted hereunder);

(m) all governmental and third party approvals necessary in connection with the Transactions, the financing contemplated hereby and the continuing operations of the Loan Parties (including equityholder approvals, if any) shall have been obtained on terms reasonably satisfactory to the Administrative Agent and shall be in full force and effect;

(n) the Bankruptcy Court shall have entered the Confirmation Order, which shall be Final and in full force and effect (as used herein, "Final" shall mean an order or judgement of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, which has not been reversed, stayed, modified or amended, and as to which (i) the time to appeal, petition for certiorari, or move for reargument or rehearing (other than a request for a rehearing under Federal Rule of Civil Procedure 60(b), which shall not be considered for purposes of this definition) has expired and no appeal or petition for certiorari has been timely taken, or (ii) any timely appeal that has been taken or any petition for certiorari that has been or may be timely filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or has otherwise been dismissed with prejudice);

(o) the Confirmation Order shall approve this Agreement and authorize the Loan Parties' execution and delivery of this Agreement and the other Loan Documents;

(p) all conditions precedent to the confirmation and effectiveness of the Chapter 11 Plan set forth therein (other than the effectiveness of this Agreement) shall have been fulfilled or waived as permitted therein, and all transactions contemplated in the Chapter 11 Plan or in the Confirmation Order to occur on or prior to the Plan Effective Date shall have been substantially consummated in accordance with the terms thereof and in compliance with applicable law, Bankruptcy Court and regulatory approval;

(q) (i) The Administrative Agent shall have received at least three (3) Business Days prior to the Effective Date all documentation and other information about the Borrower and the Guarantors required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act that has been requested by the Administrative Agent or the applicable Lender in writing at least ten (10) Business Days prior to the Effective Date and (ii) if the Borrower or any Guarantor qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, such Person shall have delivered a Beneficial Ownership Certification in relation to such Person to any Lender that has requested such certification; and

(r) the Administrative Agent shall have received such other documents as the Administrative Agent may reasonably request.

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 signed this Agreement 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 notice from such Lender prior to the Effective Date specifying its objection thereto. All documents executed or submitted pursuant to this Section 6.01

by and on behalf of the Borrower or any of its Subsidiaries shall be in form and substance reasonably satisfactory to the Administrative Agent. The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding.

Section 6.02. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing (including any Borrowing of Tranche A Loans on the Effective Date), is subject to the satisfaction of the following conditions:

(a) at the time of and immediately after giving effect to such Borrowing, no Default shall have occurred and be continuing;

(b) the representations and warranties of the Loan Parties 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 Borrowing, except that (i) to the extent any such representations and warranties are expressly limited to an earlier date, then on and as of the date of such Borrowing, 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 representation and warranty is qualified by materiality, such representation and warranty shall continue to be true and correct in all respects;

(c) the making of such Loan shall not be prohibited by any applicable Governmental Requirement, and no litigation shall be pending or threatened, which does or, with respect to any threatened litigation, seeks to, enjoin, prohibit or restrain, the making or repayment of any Loan or any participations therein or the consummation of the transactions contemplated by this Agreement or any other Loan Document; and

(d) the receipt by the Administrative Agent of a Borrowing Request Notice in accordance with Section 2.02.

Each request for a Borrowing shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters, and to the extent, specified in Section 6.02(a) through (c).

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

Each of Parent and the Borrower represents and warrants to the Lenders that, after giving effect to the Confirmation Order and the Chapter 11 Plan:

Section 7.01. Organization; Powers. Each of the Loan Parties is 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, 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 the Loan Parties' respective limited partnership or limited liability company powers and have been duly authorized by all necessary limited partnership or limited liability company and, if required, equityholder 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 any 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, enforceable in accordance with its terms, subject to applicable Debtor Relief Laws 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 equityholders, members, partners or any class of directors or managers, 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 and (ii) those third party approvals or consents which, if not made or obtained, would not cause a Default hereunder, could not reasonably be expected to have a Material Adverse Effect and would not have an adverse effect on the enforceability of the Loan Documents, (b) will not violate any applicable law or regulation or the Organizational Documents of any Loan Party or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture or other material agreement binding upon any Loan Party or its Properties, or give rise to a right thereunder to require any payment to be made by any Loan Party and (d) will not result in the creation or imposition of any Lien on any material Property of any Loan Party (other than the Liens created by the Loan Documents).

Section 7.04. No Material Adverse Change. Since the Effective Date, there has been no event, development or circumstance that has had a Material Adverse Effect.

Section 7.05. Litigation.

(a) Except as set forth on Schedule 7.05 as of the Effective Date or otherwise disclosed in writing to the Administrative Agent and the Lenders after the Effective Date, 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 any Loan Party that either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(b) Since the Effective Date, there has been no change in the status of the matters disclosed in Schedule 7.05 that, individually or in the aggregate, has resulted in a Material Adverse Effect.

Section 7.06. Environmental Matters. Except as has not resulted in a Material Adverse Effect or as set forth on Schedule 7.06:

(a) the Loan Parties 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 Loan Parties 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 other Loan Parties 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, or proceedings concerning any violation of, or any liability (including as a potentially responsible party or any liability for investigation, remediation, removal, abatement, or monitoring of Hazardous Materials) under, any applicable Environmental Laws that is pending or, to the Borrower's knowledge, threatened against any Loan Party or any of their respective Properties or as a result of any operations at such Properties;

(d) none of the Properties of the Loan Parties contain any: (i) underground storage tanks; (ii) asbestos-containing materials; (iii) landfills or dumps; (iv) hazardous waste management units as defined pursuant to RCRA or any comparable state law; or (v) sites on or nominated for the National Priorities 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 Loan Parties' Properties, there are no investigations, remediations, abatements, removals, or monitorings of Releases 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) 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 the Borrower or any Loan Party or relating to any of the Loan Parties' Properties that could reasonably be expected to form the basis for a claim for damages or compensation; and

(g) the Loan Parties have provided to the Lenders complete and correct copies of all material 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 any other Loan Party's possession or control and relating to their respective Properties or operations thereon.

Section 7.07. Compliance with the Laws and Agreements; No Defaults.

(a) Except where the failure to do so, individually or in the aggregate, has not had a Material Adverse Effect, each of the Loan Parties (i) to its knowledge, 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 (ii) possesses all licenses, permits, franchises, exemptions, approvals and other governmental authorizations, in each case, necessary for the ownership of its Property and the conduct of its business.

(b) None of the Loan Parties is in default nor has any event or circumstance occurred which, but for the expiration of any applicable grace period or the giving of notice, or both, would result in or permit the acceleration of the maturity of or would require the Borrower or any other Loan Party to Redeem or make any offer to Redeem under any indenture, note, credit agreement or instrument pursuant to which any Material Indebtedness is outstanding or by which the Borrower or any other Loan Party or any of their Properties is bound.

(c) No Default or Event of Default has occurred and is continuing.

Section 7.08. Investment Company Act. No Loan Party is required to be registered as an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

Section 7.09. Taxes. Each of the Loan Parties has timely filed or caused to be filed all material Tax returns and reports required by applicable law to have been filed after the Effective Date, with such Tax returns accurately reflecting in all material respects all liabilities for Taxes of the Loan Parties for the periods covered thereby, and has paid or caused to be paid all Taxes required to have been paid by it pursuant to such returns, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such other Loan Party, as applicable, has set aside on its books adequate reserves in accordance with GAAP, (b) to the extent otherwise excused or prohibited under the Bankruptcy Code or (c) where the failure to do so, individually or in the aggregate, has not had a Material Adverse Effect. The charges, accruals and reserves on the books of the Loan Parties in respect of Taxes and other governmental charges are, in the reasonable opinion of the Borrower, adequate.

Section 7.10. ERISA.

(a) Each Plan is in compliance in all respects with the applicable provisions of ERISA, the Code and other applicable laws, except for such noncompliance as could not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect; and each Plan and Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the IRS to the effect that the form of such Plan or Pension Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from Federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS, and, to the knowledge of the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) Other than routine claims for benefits, there are no pending or, to the knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that, either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, there has been no "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) or violation of the fiduciary responsibility rules with respect to any Plan that, either individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

(c) Except as could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, no ERISA Event has occurred, and none of the Loan Parties, nor any ERISA Affiliate is aware of any fact, event or circumstance that, either individually or in the aggregate, could reasonably be expected to constitute or result in an ERISA Event.

(d) Except as could not reasonably be expected, either individually or in the aggregate, a Material Adverse Effect, full payment when due has been made of all amounts which each Loan Party or any ERISA Affiliate is required, under the terms of each Plan, Pension Plan, Multiemployer Plan or applicable law, to have paid as contributions to such Plan, Pension Plan or Multiemployer Plan as of the date hereof.

(e) None of the Loan Parties 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 (other than in accordance with Section 4980B of the Code or any similar State law), that may not be terminated by any of the Loan Parties or any ERISA Affiliate in its sole discretion at any time without any liability that would have a Material Adverse Effect.

(f) The present value of all accrued benefit liabilities (as defined in Section 4001(a)(16) of ERISA) under each Pension Plan (based on those assumptions used to fund such Pension Plan) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Pension Plan allocable to such accrued benefits by an amount that would have a Material Adverse Effect (any such excess, "**Unfunded Pension Liabilities**"). As of the most recent valuation date for each Multiemployer Plan, the potential liability of the Borrower, any Loan Party or any ERISA Affiliate for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, would not have a Material Adverse Effect.

Section 7.11. Disclosure; No Material Misstatements. None of the reports, financial statements, certificates or other information furnished by or on behalf of the Loan Parties 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 omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; *provided* that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time. As of the Effective Date, to the knowledge of the Borrower, the information included in the Beneficial Ownership Certification delivered on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

Section 7.12. Insurance. The Loan Parties have 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 engaged in the same or a similar business for the assets and operations of the Loan Parties. 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.

Section 7.13. [Reserved].

Section 7.14. Subsidiaries and Capitalization.

(a) Schedule 7.14(a) sets forth, as of the Effective Date, all of the Subsidiaries of the Borrower.

(b) Schedule 7.14(b) sets forth, as of the Effective Date, the owners of all authorized and outstanding Equity Interests of each Loan Party, including options and other equity equivalents of each Loan Party, together with the amount and percentage of such Equity Interests held by each such owner. All of the outstanding Equity Interests of each Loan Party are validly issued and free and clear of any and all Liens (other than Liens permitted by Section 9.04).

(c) Except as set forth on Schedule 7.14(c), as of the Effective Date, there are no outstanding shares of capital stock or other Equity Interests, securities, rights, warrants or options convertible or exchangeable into or exercisable for any shares of capital stock or other Equity Interests, stock appreciation rights or phantom stock of any Loan Party. Except as set forth on Schedule 7.14(c), as of the Effective Date, no Loan Party is under any obligation, contingent or otherwise, to redeem or otherwise acquire any shares of its capital stock or other Equity Interests or any securities, rights or options to acquire such capital stock, Equity Interests, stock appreciation rights or phantom stock.

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 VPROP Operating, LLC; and the organizational identification number of the Borrower in its jurisdiction of organization is 6588917 (or, in each case, as set forth in a notice delivered to the Administrative Agent pursuant to Section 8.01(l) 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(l) and Section 12.01(c)). Each Subsidiary's jurisdiction of organization, name as listed in the public records of its jurisdiction of organization, organizational identification number in its jurisdiction of organization, and the location of its principal place of business and chief executive office is stated on Schedule 7.14 (or as set forth in a notice delivered pursuant to Section 8.01(l)).

Section 7.16. Properties; Titles, Etc.

(a) Each of the Loan Parties has (i) good title in fee simple to, or valid leasehold interests in, all real property necessary in the ordinary conduct of its business, (ii) valid leasehold interests in, or valid licenses or other rights to use, all leased or licensed personal property and assets material to the ordinary conduct of its business, and (iii) valid title to all other personal property material to the ordinary conduct of its business, except in each case, for such defects in title or failure to have such or other interest as has not, individually or in the aggregate, had a Material Adverse Effect.

(b) All material leases and agreements necessary for the conduct of the business of the Loan Parties are valid and subsisting, in full force and effect, and there exists no default or event or circumstance which with the giving of notice or the passage of time or both would have a Material Adverse Effect.

(c) The rights and Properties presently owned, leased or licensed by each Loan Party including, without limitation, all easements and rights of way, include all rights and Properties necessary to permit each Loan Party to conduct its business.

(d) All of the Properties of the Loan Parties which are reasonably necessary for the operation of their businesses are maintained in accordance with prudent business standards.

(e) Each Loan Party owns, or is licensed to use, all trademarks, trade names, copyrights, patents and other intellectual Property material to its business, and the use thereof by the Borrower and such other Loan Parties does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, have not had a Material Adverse Effect. The Loan Parties either own or have valid licenses or other rights to use all databases, geological data, geophysical data, engineering data, seismic data, maps, interpretations and other technical information that are necessary to conduct their business, subject to the limitations contained in the agreements governing the use of the same, which limitations are customary for companies engaged in similar businesses.

Section 7.17. [Reserved].

Section 7.18. [Reserved].

Section 7.19. [Reserved].

Section 7.20. Swap Agreements. Schedule 7.20, as of the date hereof, sets forth, a true and complete list of all Swap Agreements of the Borrower and each other Loan Party, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), the net mark-

to-market value thereof, all credit support agreements relating thereto and the counterparty to each such agreement.

Section 7.21. Use of Loans. The proceeds of the Loans shall be only for the purposes specified in Section 9.09. The Loan Parties 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 whether on or following the Effective Date for any purpose which violates the provisions of Regulations T, U or X of the Board.

Section 7.22. Solvency. As of the Effective Date, after giving effect to the transactions contemplated hereby, (a) the aggregate assets (after giving effect to amounts that could reasonably be received by reason of indemnity, offset, insurance or any similar arrangement), at a fair valuation, of each Loan Party will exceed the aggregate Debt of such Loan Party, as the Debt becomes absolute and matures, (b) each of the Loan Parties will not have incurred or intended to incur, and will not believe that it will incur, Debt beyond its ability to pay such Debt (after taking into account the timing and amounts of cash to be received by each of the Borrower and the other Loan Parties and the amounts to be payable on or in respect of its liabilities, and giving effect to amounts that could reasonably be received by reason of indemnity, offset, insurance or any similar arrangement) as such Debt becomes absolute and matures and (c) each of the Loan Parties will not have (and will have no reason to believe that it will have thereafter) unreasonably small capital for the conduct of its business.

Section 7.23. Material Contracts. As of the Effective Date, neither Borrower nor any Subsidiary is a party to any Material Contract other than those Material Contracts set forth on Schedule 7.23. The Borrower has provided the Administrative Agent with copies certified as being true, complete and correct of such Material Contracts. Each of the Borrower and its Subsidiaries is in material compliance with the terms of the Material Contracts to which it is a party, except where the failure to be in compliance has not resulted in a Material Adverse Effect.

Section 7.24. Foreign Corrupt Practices. No Loan Party, nor any director, officer, agent, employee or Affiliate of the Loan Parties 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 their Affiliates have conducted their business in material compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

Section 7.25. OFAC. No Loan Party, nor to the knowledge of any Loan Party, any director, officer, employee, agent, Affiliate of a Loan Party or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (a) currently the subject or target of any Sanctions or (b) located, organized or resident in a Designated Jurisdiction.

Section 7.26. [Reserved].

Section 7.27. [Reserved].

Section 7.28. Accounts. Schedule 7.28 lists all Deposit Accounts, Securities Accounts and Commodity Accounts maintained by or for the benefit of the Borrower or any Guarantor as of the Effective Date, together with an indication as to whether each such account is an Excluded Account (as such term is defined in the Security Agreement) and the basis for such determination.

ARTICLE VIII
AFFIRMATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder and all other amounts payable under the Loan Documents then outstanding shall have been paid in full, the Borrower covenants and agrees with the Lenders that:

Section 8.01. Financial Statements; Other Information. The Borrower will furnish to the Administrative Agent for prompt distribution to each Lender:

(a) Annual Financial Statements. As soon as available, but in any event not later than 120 days after the end of each fiscal year, Parent's audited consolidated balance sheet and related consolidated statements of operations, members' equity and cash flows as of the end of and for such year, all reported on by Sutton Frost Cary or other independent public accountants reasonably acceptable to the Administrative Agent (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit (other than with respect to, or resulting from, (x) the occurrence of an upcoming maturity date of any Debt or (y) any prospective or actual default in financial covenants hereunder (if any))) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of Parent and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied.

(b) Quarterly Financial Statements. For each of the first three Fiscal Quarters of each fiscal year, as soon as available, but in any event not later than 60 days after the end of each such Fiscal Quarter, Parent's consolidated balance sheet and related consolidated statements of operations, members' equity and cash flows as of the end of and for such Fiscal Quarter and the then elapsed portion of the fiscal year, all certified by one of Parent's Financial Officers as presenting fairly in all material respects the financial condition and results of operations of Parent and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes.

(c) [Reserved]

(d) [Reserved]

(e) Certificate of Insurer - Insurance Coverage. Upon request from the Administrative Agent, a certificate of insurance coverage from each insurer evidencing that the Loan Parties are carrying the insurance required by Section 8.07, in form and substance satisfactory to the Administrative Agent, and, if requested by the Administrative Agent, copies of the applicable policies.

(f) Other Accounting Reports. Promptly upon receipt thereof, a copy of any "management letter" received by any of the Loan Parties by independent accountants that indicates, in the reasonable good faith judgment of the board of directors (or comparable governing body), as applicable, of the Borrower or any such other Loan Party, a material weakness in such Person's internal controls or procedures and the management's responses thereto.

(g) SEC and Other Filings. Promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any other Loan Party with the SEC, or with any national or foreign securities exchange.

(h) [Reserved].

(i) [Reserved].

(j) [Reserved].

(k) [Reserved].

(l) Information Regarding Borrower and other Loan Parties. Prompt written notice of any change in (i) any Loan Party's legal name, (ii) the location of any Loan Party's chief executive office or principal place of business, (iii) any Loan Party's identity or corporate structure, (iv) any Loan Party's jurisdiction of organization or such Loan Party's organizational identification number in such jurisdiction of organization, and (v) any Loan Party's federal taxpayer identification number.

(m) Quarterly Production and Operating Reports. Within sixty (60) days after the end of each calendar quarter, the Borrower shall provide to the Administrative Agent and the Lenders (i) a report setting forth, for each Fiscal Quarter during the then current fiscal year to date, the volume of production and sales attributable to production (and the prices at which such sales were made and the revenues derived from such sales) for each such Fiscal Quarter from the Sand Properties of the Loan Parties, and setting forth all related Taxes attributable thereto and incurred for each such Fiscal Quarter and (ii) a copy of the operating report prepared by or received by management in the ordinary course of business for such period, in reasonable detail.

(n) [Reserved].

(o) [Reserved].

(p) [Reserved].

(q) Communications with Other Lenders. Within five (5) business days of a Responsible Officer obtaining knowledge thereof, copies of all material notices received or delivered by any Loan Party pursuant to any Permitted ABL Facility.

(r) [Reserved].

(s) Other Requested Information. Promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any other Loan Party (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.

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 or Event of Default;

(b) the occurrence of any "Default" or "Event of Default" under and as defined in any Permitted ABL Facility;

(c) the occurrence of (i) any material breach or default by any Loan Party under any Material Contract, together with a copy of any default noticed issued in connection therewith, or (ii) any material amendment, modification or termination of any Material Contract (other than any Material Contract that is solely by and among Loan Parties);

(d) 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 the Borrower, any other Loan Party or any of their respective Properties that could reasonably be expected to have a Material Adverse Effect, and any material adverse development in any such action, suit, proceeding, investigation or arbitration;

(e) 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 a Material Adverse Effect; 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, 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 the ownership of its Properties requires such qualification; *provided* that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 9.12.

Section 8.04. Payment of Obligations. The Borrower will, and will cause each Subsidiary to, pay and discharge, before the same shall become delinquent or in default, all its obligations (including Tax liabilities) that, if not paid, could reasonably be expected to result in a Material Adverse Effect, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such other Loan Party 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 the Borrower or any other Loan Party.

Section 8.05. Performance of Obligations. The Borrower will pay the Loans in accordance with the terms hereof, and the Borrower will, and will cause each Subsidiary to, do and perform every act and discharge all of its obligations to be performed and discharged by it under the Loan Documents at the time or times and in the manner specified, taking into consideration any grace periods therein. The Borrower will, and will cause each Subsidiary to, discharge all of its Contractual Obligations (other than the Loan Documents) at the time or times and in the manner specified, taking into consideration any grace periods therein, 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 8.06. Operation and Maintenance of Properties. Except (i) where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect and (ii) in connection with the period prior to the commencement of historical business operations after the Effective Date (as disclosed to the Lenders), the Borrower will, and will cause each Subsidiary to:

(a) operate its Sand Properties and other material Properties in a careful manner in accordance with the practices of the industry and in material compliance with all applicable contracts and agreements and in compliance with all Governmental Requirements, including, without limitation, applicable Environmental Laws, and all other applicable laws, rules and regulations of every Governmental Authority from time to time constituted to regulate the development and operation of its Sand Properties and the production and sale of sand and other minerals therefrom;

(b) keep and maintain all Property material to the conduct of its business in good working order and condition (ordinary wear and tear excepted), preserve, maintain and keep in good repair and working order (ordinary wear and tear and obsolescence excepted) all of its Sand Properties and other material Properties, including, without limitation, all equipment, machinery and facilities;

(c) promptly pay and discharge, or make reasonable and customary efforts to cause to be paid and discharged, all rentals, royalties, expenses and Obligations accruing under the leases or other agreements affecting or pertaining to its Sand Properties and do all other things necessary to keep unimpaired its rights with respect thereto and prevent any forfeiture thereof or default thereunder;

(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 Sand Properties and other material Properties; and

(e) operate its Sand Properties and other material Properties or cause or make reasonable and customary efforts to cause the Sand Properties and other material Properties operated by any Person other than a Loan Party to be operated in accordance with the practices of the industry and in material compliance with all applicable contracts and agreements and in compliance with all Governmental Requirements.

Section 8.07. Insurance. The Borrower will, and will cause each Subsidiary to, maintain, with financially sound and reputable insurance companies, insurance (a) in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations, (b) in accordance with all Governmental Requirements and (c) business interruption insurance in amounts and against such risks as are reasonably satisfactory to the Administrative Agent. Subject to Section 8.18, the loss payable clauses or provisions in said insurance policy or policies insuring any of the Collateral (excluding any business interruption insurance) shall be endorsed in favor of and made payable to the Administrative Agent as its interests may appear and such liability policies shall name the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, as "additional insured" and provide that the insurer will endeavor to 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, keep proper books of record and account in which entries that are full, true and correct in all material respects are made of all dealings and transactions in relation to its business and activities. 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 officers and, provided that the Borrower receives advance written notice of any proposed meetings and is given an opportunity to participate in such discussions, with its independent accountants, all at such reasonable times and as often as reasonably requested; provided that, unless an Event of Default has occurred and is continuing, the Administrative Agent and the Lenders shall be limited to an aggregate of two (2) such visits or inspections per year.

Section 8.09. Compliance with Laws. The Borrower will, and will cause each Subsidiary to, comply in with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its Property, except if the failure to comply therewith could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 8.10. Environmental Matters.

(a) The Borrower will, and will cause each Subsidiary to, at its sole expense: (i) comply, and shall cause its Properties and operations and each other Loan Party and each other Loan Party's Properties and operations to comply in all material respects, with all applicable Environmental Laws; (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 any other Loan Party's Properties or any other property offsite the Property to the extent caused by the Borrower's or any other Loan Party's operations except in compliance with applicable Environmental Laws in all material respects; (iii) timely obtain or file, and shall cause each Subsidiary to timely obtain or file, all material 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 any other Loan Party's Properties; and (iv) promptly commence and diligently prosecute to completion, and shall cause each other Loan Party 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 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 any other Loan Party's Properties.

(b) The Borrower will, promptly after obtaining knowledge of the occurrence of a triggering event, notify the Administrative Agent in writing of any threatened action, investigation or inquiry by any Governmental Authority or any threatened demand or lawsuit by any Person against the Borrower or any Subsidiary or their respective Properties in connection with any Environmental Laws that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect.

Section 8.11. Further Assurances.

(a) The Borrower at its sole expense will, and will cause each other Loan Party 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 other Loan Party, as the case may be, in the Loan Documents or to further evidence and more fully describe the Collateral intended as security for the 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 reasonable discretion of the Administrative Agent, in connection therewith.

(b) The Borrower hereby authorizes the Administrative Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of the Borrower or any other Loan Party where permitted by law. A carbon, photographic or other reproduction of the Security Instruments or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law. The Borrower acknowledges and agrees that any such financing statement may describe the Collateral as "all assets" of the Borrower and the other Loan Parties or words of similar effect as may be required by the Administrative Agent.

Section 8.12. [Reserved].

Section 8.13. Title Information. [At the request of the Administrative Agent, the Borrower will deliver to the Administrative Agent fully paid policies of title insurance (or marked-up title insurance commitments having the effect of policies of title insurance) on the Mortgaged Property naming the Administrative Agent as the insured for its benefit and that of the Secured Parties and their respective successors and assigns (the "**Mortgage Policies**") issued by a nationally recognized title insurance company reasonably acceptable to the Administrative Agent in form and substance and in an amount reasonably acceptable to the Administrative Agent (not to exceed 100% of the fair market value of the real properties covered thereby), insuring the Mortgages to be valid subsisting first priority Liens on the property described therein, free and clear of all Liens other than Liens permitted by Section 9.04.][3]

Section 8.14. Additional Collateral; Additional Guarantors.

(a) The Borrower shall cause each of its Subsidiaries to unconditionally guaranty, on a joint and several basis, the prompt payment and performance of the Obligations pursuant to the Guaranty Agreement and, in connection therewith, within fifteen (15) Business Days (or such later date as the Administrative Agent may agree in its sole discretion) following any acquisition or creation (or similar event) of a new Subsidiary following the Effective Date, the Borrower shall cause such Subsidiary, to (i) become a party to the Guaranty Agreement by executing and delivering an amendment or a supplement to the Guaranty Agreement in form and substance acceptable to the Administrative Agent, (ii) become a party to the Security Agreement by executing and delivering an amendment or a supplement to the Security Agreement in form and substance acceptable to the Administrative Agent, (iii) become a party to the Pledge Agreement by executing and delivering an amendment or a supplement to the Pledge Agreement in form and substance acceptable to the Administrative Agent, and (iv) execute and deliver such other additional security documents, closing documents, certificates and legal opinions as shall reasonably be requested by the Administrative Agent.

(b) Within fifteen (15) Business Days (or such later date as the Administrative Agent may agree in its sole discretion) following any acquisition or creation (or similar event) of a new Subsidiary following the Effective Date, the Borrower shall, or shall cause the applicable Guarantor that owns Equity Interests in such Subsidiary to, execute and deliver an amendment or supplement to the Pledge Agreement to confirm the pledge all of the Equity Interests in such new Subsidiary. The Borrower and each Guarantor shall also deliver to the Administrative Agent, together with or prior to its delivery of the Pledge Agreement or any amendment or supplement thereto as set forth above, (A) original stock or equity certificates, if any, evidencing the Equity Interests in each Subsidiary owned by it, together with an appropriate undated stock power for each certificate duly executed in blank by the registered owner thereof or, if uncertificated, such other documents as may be reasonably required by the Administrative Agent to perfect the Lien therein by

[3] NTD: Subject to further diligence.

"control" in accordance with the applicable Uniform Commercial Code (including, without limitation, Sections 8-106, 9-106 and 9-314 thereof) and (B) such other additional security documents, closing documents, certificates and legal opinions as shall reasonably be requested by the Administrative Agent.

(c) Upon the request of the Administrative Agent following any acquisition by any Loan Party of fee interest in real Property in the United States with a fair market value of $500,000 or more ("**Material Real Property**"), following the Effective Date, the Borrower shall, and shall cause each Subsidiary to, grant to the Administrative Agent for the benefit of the Secured Parties a first priority Lien (subject to Liens permitted pursuant to Section 9.04 hereof) in such real Material Real Property, and the applicable Loan Party shall execute such documents, joinder agreements, financing statements, mortgages, agreements and instruments, and take all action (including obtaining and providing consents, title insurance, surveys and legal opinions) that may be required under applicable law or as the Administrative Agent may request, in order to grant, preserve, protect and perfect such Lien. All such Liens will be created and perfected by and in accordance with the provisions of mortgages, deeds of trust, security agreements and financing statements or other Security Instruments, all in form and substance reasonably satisfactory to the Administrative Agent and in sufficient executed (and acknowledged where necessary or appropriate) counterparts for recording purposes.

(d) Subject to the foregoing clauses (a), (b) and (c), the Borrower will at all times cause the other tangible and intangible assets and Property of the Borrower and each Subsidiary Guarantor, now owned or hereafter acquired (other than Excluded Property (as such term is defined in the Security Agreement)), to be subject to a Lien of the Security Instruments.

(e) The Borrower will, and will cause each of its Subsidiaries to, deliver to the Administrative Agent Blocked Account Control Agreements (in each case duly executed and delivered by the relevant Loan Party and relevant depository bank) covering such Deposit Accounts (other than Excluded Accounts (as such term is defined in the Security Agreement)) as shall be necessary to ensure that the aggregate balance of all Deposit Accounts (other than Excluded Accounts) not subject to a Blocked Account Control Agreement at any given time is less than $500,000.

Section 8.15. ERISA Compliance. The Borrower will promptly furnish and will cause the other Loan Parties and any ERISA Affiliate to promptly furnish to the Administrative Agent (i) promptly after the filing thereof with the United States Secretary of Labor or the IRS, copies of each annual and other report with respect to each Pension Plan or any trust created thereunder, and (ii) immediately upon becoming aware of the occurrence of any ERISA Event or any non-exempt "prohibited transaction," as described in Section 406 of ERISA or in Section 4975 of the Code, in connection with any Plan or Pension Plan or any trust created thereunder that could reasonably be expected to result in liability of the Borrower and the other Loan Parties in an aggregate amount exceeding $2,000,000 (when taken together with all other such ERISA Events and prohibited transactions that have occurred within the preceding twelve (12) months), a written notice signed by the President or the principal Financial Officer, the Subsidiary or the ERISA Affiliate, as the case may be, specifying the nature thereof, what action the Borrower, such other Loan Party or the ERISA Affiliate is taking or proposes to take with respect thereto, and, when known, any action taken or proposed by the IRS, the Department of Labor or the PBGC with respect thereto.

Section 8.16. [Reserved].

Section 8.17. [Reserved].

Section 8.18. [Post-Closing Obligations. The Borrower shall deliver, or cause to be delivered, the items described on Schedule 8.18 within the time periods set forth therein (or such longer period as may be approved by the Administrative Agent in its sole discretion).]

ARTICLE IX
NEGATIVE COVENANTS

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder and all other amounts payable under the Loan Documents then outstanding have been paid in full, the Borrower covenants and agrees with the Lenders that:

Section 9.01. Liquidity. The Borrower and its Subsidiaries will collectively maintain, as of the last day of each calendar month, Liquidity of not less than $5,000,000.

Section 9.02. [Reserved].

Section 9.03. Debt. The Borrower will not incur, create, assume or suffer to exist any Debt, and will not permit any Subsidiary to, incur, create, assume or suffer to exist any Debt, except:

(a) the Obligations (including Debt incurred pursuant to Section 2.07 hereof);

(b) accounts payable and accrued expenses, liabilities or other obligations to pay the deferred purchase price of Property or services, from time to time incurred in the ordinary course of business which are not greater than ninety (90) days past due or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP;

(c) Debt under Capital Leases or other equipment financing arrangements incurred by the Borrower or any Subsidiary Guarantor, including for mobile excavation equipment, automobiles, trucks, rental equipment or other equipment or personal Property which may be used (i) for purposes of excavation or other similar uses on the Sand Properties or (ii) for transportation and logistics;

(d) Debt in respect of (x) appeal bonds or similar instruments and (y) payment, bid, performance or surety bonds, or other similar bonds, completion guarantees, or similar instruments, workers' compensation claims, health, disability or other employee benefit insurance claims, self-insurance obligations, letters of credit, and bankers acceptances issued for the account of Borrower or any Subsidiary, in each case listed under this clause (y), in the ordinary course of business, and including guarantees or obligations of any such Loan Party with respect to letters of credit supporting such appeal, payment, bid, performance or surety or other similar bonds, completion guarantees, or similar instruments, workers' compensation claims, health, disability or other employee benefit insurance claims, self-insurance obligations and bankers acceptances (in each case other than for an obligation for money borrowed);

(e) Debt arising in connection with endorsements of negotiable instruments for deposit or collection in the ordinary course of business;

(f) Debt under any Permitted ABL Facility and any refinancing thereof, in each case to the extent permitted by the relevant Permitted ABL Intercreditor Agreement; provided that the aggregate maximum principal amount of Debt of the Borrower and its Subsidiaries incurred under the Permitted ABL Facilities shall not at any time exceed the greater of (x) $25,000,000 and (y) the borrowing base calculated under such Permitted ABL Facilities;

(g) Debt under Swap Agreements with respect to interest rates, foreign currency exchange rates or commodity prices or any combination of the foregoing or transactions similar to the foregoing, in each case, that are not entered into for speculative purposes;

(h) Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided* that such Debt is extinguished within two (2) Business Days of its incurrence;

(i) unsecured Debt of any Loan Party assumed or incurred in connection with any Permitted Acquisition which is subordinated to the Obligations; *provided* that (A) the subordination provisions of such Debt are reasonably satisfactory in all respects to the Administrative Agent, (B) the terms of such Debt shall not provide for any maturity, amortization, sinking fund payment, mandatory redemption or other required repayment or repurchase of such Obligations (other than any required offer to repay or repurchase (x) with asset sale proceeds pursuant to customary arrangements providing that the Borrower or such other Loan Party, as the case may be, (in lieu of making such offer) repay Obligations under this Agreement or (y) pursuant to "change of control" provisions that are no more restrictive than the analogous provisions contained in this Agreement), in each case prior to six months after the Maturity Date, and (C) the covenants and events of default relating to such Debt shall be less restrictive than those contained in this Agreement;

(j) Debt existing on the date hereof and, with respect to any such Debt with an aggregate principal amount in excess of $250,000, set forth in Schedule 9.03 and extensions, renewals and replacements of any such Debt and any refinancings, modifications, renewals and extensions of any such Debt; *provided* that (i) the principal amount of such Debt shall not be increased above the amount outstanding at the time of such refinancing, renewal or extension, (ii) the maturity of such Debt shall not be shortened and (iii) the terms relating to collateral (if any) and subordination (if any) of any such refinancing, modification, renewing or extending Debt, and of any agreement entered into and of any instrument issued in connection therewith, are not less favorable in any material respect to the Loan Parties or the Lenders than the terms of any agreement or instrument governing the Debt being so refinanced, modified, renewed or extended;

(k) other Debt in an aggregate principal amount not to exceed $50,000,000 at any time outstanding;

(l) [Reserved];

(m) unsecured Debt arising from intercompany loans and advances owed by a Loan Party to another Loan Party (in either case, other than Parent) which is subordinated to the Obligations on terms that are reasonably satisfactory to the Administrative Agent; *provided* that any such intercompany loans and advances shall be subject to the limitations set forth in Section 9.06(g);

(n) Debt consisting of (i) the financing of insurance premiums or (ii) take or pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(o) Debt arising as a direct result of judgments, orders, awards or decrees against Borrower or any of its Subsidiaries, in each case not constituting an Event of Default; and

(p) unsecured Debt representing any Taxes to the extent such Taxes are being contested by Borrower or any of its Subsidiaries in good faith by appropriate proceedings and adequate reserves are being maintained by the applicable Loan Party in accordance with GAAP.

Section 9.04. 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 Obligations;

(b) Liens securing ABL Obligations subject to a Permitted ABL Intercreditor Agreement;

(c) Excepted Liens;

(d) Liens securing Capital Leases (and other equipment financing arrangements) permitted by Section 9.03(c), but only on the Property under such lease (or equipment financing arrangement);

(e) any Lien on any property or asset of any Loan Party or any Subsidiary existing on the date hereof and set forth in Schedule 9.04; *provided* that (i) such Lien shall not apply to any property or asset of such Loan Party or Subsidiary other than such property or assets subject to such Lien on the date hereof and (ii) such Lien shall secure only those obligations which it secures on the date hereof, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof; and

(f) other Liens securing Debt or other obligations; provided that at the time of the incurrence of such Liens and the related Debt and other obligations and after giving effect to the incurrence thereof, the aggregate outstanding amount of Debt and other obligations secured by Liens permitted by this clause (f) shall not exceed $25,000,000.

Section 9.05. Restricted Payments. The Borrower will not, and will not permit any Subsidiary to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except that:

(a) the Borrower may declare and pay dividends with respect to its Equity Interests payable solely in additional units or shares of its Equity Interests (other than Disqualified Capital Stock);

(b) Subsidiaries of the Borrower may declare and pay dividends to Loan Parties ratably with respect to the ownership of their Equity Interests;

(c) the Borrower may make Permitted Tax Distributions;

(d) the Borrower may make Restricted Payments pursuant to and in accordance with equity-based and other incentive compensation plans or other benefit plans for management or employees of the Borrower and its Subsidiaries;

(e) the Borrower and its Subsidiaries may make repurchases of Equity Interests in the Borrower (or any direct or indirect parent thereof) or any such Subsidiary of the Borrower deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(f) the Borrower and its Subsidiaries may pay (or make Restricted Payments to allow the Borrower or any other direct or indirect parent thereof to pay) for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of such Subsidiary (or of the Borrower or any other such direct or indirect parent thereof) from any future, present or former employee, officer, director, manager or consultant of such Subsidiary (or the Borrower or any other direct or indirect parent of such Subsidiary) or any of its Subsidiaries upon the death, disability, retirement, severance, termination of employment or breach of a restrictive covenant of any such Person or pursuant to any employee or director equity plan, employee, manager or director stock option plan or any other employee or director incentive compensation or other benefit plan or any agreement, arrangement, policy, or practice (including any stock subscription or shareholder agreement) with any employee, manager, director, officer or consultant of such Subsidiary (or the Borrower or any other direct or indirect parent thereof); and

(g) the Borrower may make other Restricted Payments so long as no Event of Default shall have occurred and be continuing.

Section 9.06. Investments and Loans. The Borrower will not, and will not permit any Subsidiary to, make or permit to remain outstanding any Investments in or to any Person, except that the foregoing restriction shall not apply to:

(a) (i) Investments as of the Effective Date and, to the extent in excess of $250,000 individually, set forth in Schedule 9.06 and (ii) Investments consisting of any modification, replacement, renewal, reinvestment or extension of any Investment described in clause (i) above; *provided* that the amount of any Investment permitted pursuant to this clause (ii) is not increased from the amount of such Investment on the Effective Date except as permitted by this Section 9.06;

(b) accounts receivable arising in the ordinary course of business and promissory notes received in settlement of any such accounts receivable;

(c) Investments in Cash Equivalents;

(d) Investments made in or to any of the other Loan Parties (other than Parent);

(e) loans or advances made by a Loan Party to its officers and employees on an arm's-length basis, including payroll, commission, travel, and entertainment expenses, relocation costs and similar purposes, or otherwise for *bona fide* business purposes, in each instance, in the ordinary course of business consistent with past practices, up to a maximum of $250,000 in the aggregate at any one time outstanding;

(f) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(g) Investments in any new Subsidiary to the extent such Subsidiary becomes a Subsidiary Guarantor as required hereunder and executes and delivers all collateral documents required hereunder;

(h) Investments in connection with Swap Agreements described in Section 9.03(g);

(i) any endorsement of a check or other medium of payment for deposit or collection through normal banking channels or similar transaction in the ordinary course of business;

(j) extensions of trade credit in the ordinary course of business;

(k) guaranties constituting Debt permitted under Section 9.03;

(l) transactions permitted by Section 9.12; and

(m) other Investments so long as no Event of Default shall have occurred and be continuing.

Section 9.07. Nature of Business; No International Operations.

(a) The Borrower will not, nor will it permit any Subsidiary to, engage in any business other than business of the type generally conducted by a Qualified Business and businesses reasonably related thereto.

(b) The Borrower will not, and will not permit any Subsidiary to, own, acquire or make any other expenditure (whether such expenditure is capital, operating or otherwise) in or related to, any Sand Properties not located within the geographical boundaries of the United States.

Section 9.08. [Reserved]

Section 9.09. Proceeds of Loans.

(a) The Borrower will not permit the proceeds of the Tranche A Loans or Incremental Term Loans to be used for any purpose other than (i) to refinance existing Debt of the Loan Parties, (ii) to pay fees, commissions and expenses incurred in connection with the Transactions, (iii) to make the Litigation Trust Loan on the Effective Date, (iv) to fund capital expenditures of the Loan Parties, and (v) to finance the working capital needs and general corporate purposes of the Borrower and its Subsidiaries.

(b) Neither the Borrower nor any other Loan Party will take any action which would cause any of the Loan Documents to violate Regulations T, U or X or any other regulation of the Board or to violate Section 7 of the Securities Exchange Act of 1934 or any rule or regulation thereunder, in each case as now in effect or as the same may hereinafter be in effect. If requested by the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form U-1 or such other form referred to in Regulation U, Regulation T or Regulation X of the Board, as the case may be.

Section 9.10. ERISA Compliance. The Borrower will not, and will not permit any Subsidiary to, at any time, except as would not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect:

(a) engage in, or permit any ERISA Affiliate to engage in, any transaction or, with respect to subsection (c) of Section 502 of ERISA, omit to take any action, in each case in connection with which the Borrower, or any other Loan Party could be subjected to either a civil penalty assessed pursuant to subsections (c), (i) or (l) of Section 502 of ERISA or a Tax imposed by Chapter 43 of Subtitle D of the Code;

(b) terminate, or permit any ERISA Affiliate to terminate, any Pension Plan in a manner, or take any other action with respect to any Pension Plan, which could result in any liability of the Borrower or any other Loan Party to the PBGC;

(c) fail to make, or permit any ERISA Affiliate to fail to make, full payment when due of all amounts which, under the provisions of any Plan or Pension Plan, agreement relating thereto or

applicable law, the Borrower, any other Loan Party or any ERISA Affiliate is required to pay as contributions thereto;

(d) permit the actuarial present value of the benefit liabilities under any Pension Plan maintained by the Borrower, any other Loan Party or any ERISA Affiliate to exceed the current value of the assets (computed on a plan termination basis in accordance with Title IV of ERISA) of such Pension Plan allocable to such benefit liabilities such that a determination would result that any Pension Plan is, or is expected to be, in "at risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code);

(e) incur a liability (whether direct or indirect) to or on account of a Pension Plan or Multiemployer Plan under Section 515, 4062, 4063, 4064, 4201 or 4204 of ERISA; or

(f) contribute to or assume an obligation to contribute to 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 (other than in accordance with Section 4980B of the Code or any similar State law), that may not be terminated by the applicable Loan Party in its sole discretion at any time without any material liability.

Section 9.11. [Reserved]

Section 9.12. Mergers, Etc. 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, wind-up or dissolve (or suffer any liquidation or dissolution), except that:

(a) any Subsidiary of the Borrower may merge or consolidate with any other Subsidiary of the Borrower;

(b) the Borrower may merge or consolidate with any Subsidiary of the Borrower so long as the Borrower is the surviving Person;

(c) any Subsidiary of the Borrower may merge into any other Person in connection with a Permitted Acquisition so long as such Subsidiary shall be the surviving Person;

(d) so long as no Event of Default has occurred and is continuing or would result after giving effect thereto, the Borrower may merge or consolidate with any other Person; *provided* that (i) the Borrower shall be the continuing or surviving Person or (ii) if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the "**Successor Company**"), (A) the Successor Company shall be an entity organized or existing under the laws of the United States, any state thereof, the District of Columbia or any territory thereof, (B) the Successor Company shall be, or shall be an Affiliate of, a Qualified Owner, (C) the Successor Company shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, (D) the direct parent company (or companies) of such Successor Company (such Person, the "**Successor Parent**") shall own (or collectively own) 100% of the outstanding Equity Interests of the Successor Company and shall expressly assume all obligations of the Parent under this Agreement and the other Loan Documents to which the Parent is a party pursuant to a supplement hereto in form and substance satisfactory

to the Administrative Agent, (E) each Subsidiary Guarantor shall have confirmed that its obligations under the Guaranty Agreement and the Security Instruments shall apply to the Successor Company's obligations under the Loan Documents, (F) if requested by the Administrative Agent, each mortgagor of a Mortgaged Property shall have confirmed that its obligations under the applicable Mortgage shall apply to the Successor Company's obligations under the Loan Documents and (G) the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower and an opinion of counsel, each to the effect that such merger or consolidation and such supplement to this Agreement or any Security Instrument preserves the enforceability of this Agreement, the Guaranty Agreement and the Security Instruments and the perfection of the Liens under the Security Instruments; *provided*, *further*, that if the foregoing are satisfied, the Successor Company will succeed to, and be substituted for, the Borrower under this Agreement; and

(e) any Subsidiary may liquidate or dissolve if (i) the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders and (ii) to the extent such Subsidiary is a Loan Party, any assets, business or Property of such Subsidiary shall be transferred to, or otherwise owned or conducted by, a Loan Party after giving effect to such liquidation or dissolution.

Section 9.13. Sale of Properties. The Borrower will not, and will not permit any Subsidiary to, sell, assign, convey or otherwise transfer any Property except for:

(a) the sale of sand and other minerals in the ordinary course of business on ordinary terms;

(b) any such transfer permitted under Section 9.12;

(c) the sale or issuance of any Equity Interest in a Subsidiary to any Loan Party;

(d) the issuance of Equity Interests (other than Disqualified Capital Stock) in the Borrower for cash;

(e) the sale or issuance of any Subsidiary's Equity Interests to the Borrower or any Wholly-Owned Subsidiary that is a Guarantor;

(f) the sale or transfer of equipment that is no longer necessary for the business of the Loan Party or is replaced by equipment of at least comparable value and use;

(g) licensing and cross-licensing arrangements involving any technology or other intellectual property of Borrower or any Subsidiary in the ordinary course of business;

(h) the abandonment of any rights, franchises, licenses, or intellectual property that any Borrower reasonably determines are no longer useful in its business or commercially desirable; and

(i) the sale or other disposition (including Casualty Events) of Properties not regulated by Section 9.13(a) to (h), provided that the applicable proceeds thereof are applied as prepayments pursuant to, and to the extent required by, Section 3.02.

Section 9.14. Environmental Matters. The Borrower will not, and will not permit any Subsidiary to, cause or permit any of its Property to be in violation of any Environmental Law, or do anything which causes a Release or threatened Release of, or exposure to, any Hazardous Materials on any such Property,

except, in each case, as would not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect.

Section 9.15. Transactions with Affiliates. The Borrower will not, and will not permit any Subsidiary to, conduct any material transaction with any of its Affiliates (other than the Borrower and the other Loan Parties or any entity that becomes a Loan Party as a result of such transaction), unless such transaction is on terms that are substantially as favorable to the Borrower or such Subsidiary as could be obtained at the time in a comparable arm's-length transaction with a Person that is not an Affiliate, as determined by the board of directors or managers of the Parent or such other Loan Party in good faith.

Section 9.16. Subsidiaries. The Borrower will not, and will not permit any Subsidiary to, create or acquire any additional Subsidiary unless such subsidiary is a Wholly-Owned Subsidiary and the Borrower gives written notice to the Administrative Agent of such creation or acquisition and complies with Section 8.14. Neither the Borrower nor any Subsidiary shall have any Subsidiary that is a Foreign Subsidiary.

Section 9.17. [Reserved].

Section 9.18. [Reserved].

Section 9.19. Swap Agreements.

(a) The Borrower will not, and will not permit any Subsidiary to, enter into any Swap Agreements with any Person other than Swap Agreements intended to hedge existing or anticipated interest rate risk incurred in respect of Debt permitted pursuant to Section 9.03.

(b) In no event shall any Swap Agreement contain any requirement, agreement or covenant for a Loan Party to post collateral or margin to secure their obligations under such Swap Agreement or to cover market exposures, except to the extent of Liens granted under the ABL Loan Documents.

(c) The Borrower will not, and will not permit any Subsidiary to, incur or permit to exist any speculative Swap Agreements or any Swap Agreements in respect of commodities or exchange rate risk.

Section 9.20. [Reserved].

Section 9.21. [Reserved].

Section 9.22. Changes in Fiscal Year End.

(a) 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

Section 9.23. [Reserved].

Section 9.24. Sanctions. The Borrower shall not, and shall not permit any Subsidiary to, directly or indirectly, use the proceeds of any Borrowing, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity, to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction, that, at the time of such funding,

is the subject of Sanctions, or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as Lender, Administrative Agent, or otherwise) of Sanctions.

ARTICLE X
EVENTS OF DEFAULT; REMEDIES

Section 10.01. Events of Default. The occurrence of 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 any 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 five (5) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any other Loan Party 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) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Section 8.03 (with respect to the existence of the Borrower), Section 8.14, [Section 8.18] or ARTICLE IX of this Agreement;

(e) any Loan Party 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) Section 10.01(c) 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 of the Borrower or such other Loan Party otherwise becoming aware of such default;

(f) any Loan Party shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable;

(g) (i) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or (ii) any event or condition that enables or permits (after giving effect to all applicable notice and cure periods) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any 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 other Loan Party to make an offer in respect thereof; provided, that, any Event of Default pursuant to this clause (g)(ii) shall automatically be deemed waived hereunder (and shall cease to be an Event of Default hereunder) to the extent (x) the holder or holders of any such Material Indebtedness or any trustee or agent on its or their behalf waive their right, as a result of the occurrence of

such event or condition, 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 other Loan Party to make an offer in respect thereof, as applicable or (y) such event or condition no longer enables or permits such holders or agents to exercise such rights described in clause (g)(ii) above;

(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 other Loan Party or its debts, or of a substantial part of its assets, under any Debtor Relief 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 other Loan Party 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) any Loan Party shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Debtor Relief 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 other Loan Party 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 or (v) make a general assignment for the benefit of creditors;

(j) any Loan Party shall admit in writing its inability or fail generally to pay its debts as they become due;

(k) (i) one or more final, non-appealable judgments for the payment of money in an aggregate amount in excess of $10,000,000 (to the extent not covered by independent third party insurance provided by insurers of the highest claims paying rating or financial strength as to which the insurer does not dispute coverage and is not subject to an insolvency proceeding) or (ii) any one or more final, non-appealable 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 any Loan Party or any combination thereof and the same shall remain undischarged for a period of sixty (60) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party to enforce any such judgment;

(l) the 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 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 part of the Collateral purported to be covered thereby, except to the extent permitted by the terms of this Agreement, or the Borrower or any other Loan Party or any of their Affiliates shall so state in writing;

(m) a Change of Control shall occur; or

(n) (i) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all 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 $10,000,000 for all periods, or (ii) there shall exist an amount of Unfunded Pension Liabilities in respect of any one or more Pension Plans that could reasonably be expected to have a Material Adverse Effect.

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, (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 other Loan Documents, shall become due and payable immediately, 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 and (iii) exercise on behalf of itself and the Lenders all rights and remedies available to it under the Loan Documents and applicable law and equity; 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 under the other Loan Documents, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and each Guarantor.

(b) In addition to any other rights and remedies granted to the Administrative Agent and the Lenders in the Loan Documents, the Administrative Agent on behalf of the Lenders may exercise all rights and remedies of a secured party under the UCC or any other applicable law.

(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 in the order set forth in Section 2.06(b).

ARTICLE XI
THE ADMINISTRATIVE AGENT

Section 11.01. Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints Ares Capital Corporation 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 or 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 and the Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by the Borrower and the Guarantors to secure any of the Obligations, together with such

powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent", and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 11.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Instruments, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this ARTICLE XI and ARTICLE XII (including Section 12.03(c)), as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents.

Section 11.02. Rights as a Lender. The Person serving as the Administrative Agent hereunder shall 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 the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, 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. 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:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any 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 as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *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 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 any Debtor Relief Law;

(c) 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;

(d) 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 10.02 and Section 12.02) or (ii) in the absence of 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 notice describing such Default is given to the Administrative Agent by the Borrower or a Lender; and

(e) 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, or the creation, perfection or priority of any Lien purported to be created by the Security Instruments, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in ARTICLE VI or elsewhere herein or in any other Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

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, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. 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 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 in connection with the syndication of the credit facilities provided for herein as well as activities 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 nonappealable 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.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders 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 successor, which shall be a financial institution with an office in the United States, or an Affiliate of any such financial institution with an office in the United States. 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 (or such earlier day as shall be agreed by the Required Lenders) (the "**Resignation Effective Date**"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date, (1) 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 held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such Collateral until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring Administrative Agent, 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 directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. 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 Administrative Agent (other than as provided in Section 12.05 with respect to Section 5.02 and other than any rights to indemnity payments or other amounts owed to the retiring Administrative Agent as of the Resignation Effective Date), 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 Section 11.06). 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 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 while the retiring Administrative Agent was acting as Administrative Agent.

Section 11.07. Non-Reliance on Administrative Agent, Administrative Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender, 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 such Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under 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 the other Loan Parties 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 Borrower or the other Loan Parties. Each 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. Administrative Agent May File Proofs of Claim; Credit Bidding. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Section 12.03) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 12.03.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender or in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (*provided* that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 12.02(b), (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that is assigned to an acquisition vehicle is not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

Section 11.09. Collateral and Guaranty Matters. Without limiting the provision of Section 11.10, the Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion:

(a) to release any Lien on any Property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Commitments and payment in full of all Obligations (including upon the Debt Conversion), (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document to a Person that is not the Borrower or a Guarantor, (iii) to the extent required by the terms of any Permitted ABL Facility, or (iv) if approved, authorized or ratified in writing in accordance with Section 12.02; and

(b) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 9.04(b) and Section 9.04(d).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of Property, or to release any Guarantor from its obligations under the Guaranty Agreement pursuant to this Section 11.09. In each case as specified in this Section 11.09, the Administrative Agent will, at the Borrower's expense, execute and deliver to the Borrower or any Guarantor, as applicable, such documents as such Person may reasonably request to evidence the release of such item of Property from the assignment and security interest granted under the Security Instruments or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty Agreement, in each case in accordance with the terms of the Loan Documents and this Section 11.09.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by the Borrower or any Guarantor in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

Section 11.10. Action by 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 as shall be necessary under the circumstances as provided in Section 12.02) and in all cases the Administrative Agent shall be fully justified in failing or refusing to take any discretionary action or exercise any discretionary power hereunder or under any other Loan Documents unless it shall (a) receive written instructions from the Required Lenders or the Lenders, as applicable, (or such other number or percentage of the Lenders 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 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. 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 Required Lenders, *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. The Administrative Agent shall not be liable to any Lender for any action taken or not taken by it with the consent or at the request of the Required Lenders or the Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 12.02), and otherwise the Administrative Agent shall not be liable for any action taken or not taken by it 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.

ARTICLE XII
MISCELLANEOUS

Section 12.01. Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and 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 4413 Carey Street, Fort Worth, Texas 76119, Attention: Kristin Smith, E-mail: ksmith@vprop.com, with a copy to Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas, 75129, Attn: Sakina Foster, Facsimile No. (214) 200-0944, E-mail: sakina.foster@haynesboone.com;

(ii) if to the Administrative Agent, to it at 245 Park Avenue, 44th Floor, New York, New York 10167, Attn: General Counsel, Facsimile No. (212) 750-1777, E-mail: arccgeneralcounsel@aresmgmt.com, with a copy to Sidley Austin LLP, 1000 Louisiana Street, Suite 5900, Houston, TX 77002, Attn: Herschel Hamner, Facsimile No. (713) 495-7799, E-mail: hhamner@sidley.com; and

(iii) if to any other Lender, to its at its address (or facsimile number) set forth on Annex I hereto.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including e-mail, FpML Messaging, and Internet or intranet websites pursuant to procedures approved by the Administrative Agent); *provided* that the foregoing shall not apply to notices pursuant to ARTICLE II, ARTICLE III, ARTICLE IV and ARTICLE V unless otherwise agreed by the Administrative Agent and the applicable Lender. 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.

(c) 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.

Section 12.02. Waivers; Amendments.

(a) No failure on the part of the Administrative Agent 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 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 or any Lender may have had notice or knowledge of such Default at the time.

(b) Subject to Sections 2.07 and 5.05, neither this Agreement nor any provision hereof nor any other Loan Document 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 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 Obligations hereunder or under any other Loan Document, without the written consent of each Lender directly affected thereby, (iii) postpone the scheduled date of payment or prepayment of the principal amount of any Loan, or any interest thereon, or any fees payable hereunder, or any other Obligations hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, or postpone or extend the Maturity Date, without the written consent of each Lender directly affected thereby, (iv) change Section 2.06(a), 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 2.06(b), Article VI, Section 8.14 or Section 10.02(c) or change the definition of the terms "Domestic Subsidiary," "Foreign Subsidiary," or "Subsidiary," without the written consent of each Lender, (vi) waive or amend Section 11.10 without the written consent of each Lender directly affected thereby, (vii) release any Guarantor (except as set forth in the Guaranty Agreement and except in connection with a disposition permitted hereunder) or release all or substantially all of the Collateral, without the written consent of each Lender, or (viii) change any of the provisions of this Section 12.02(b) 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; *provided further* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or any other agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent or such other agent, as the case may be. Notwithstanding the foregoing, any supplement to Schedule 7.14 (Loan Parties and 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. Notwithstanding the foregoing, no consent with respect to any amendment, waiver or other modification of this Agreement shall be required of any Defaulting Lender, except with respect to any amendment, waiver or other modification referred to in clause (i), (ii) or (iii) of the first proviso of this paragraph and then only in the event such Defaulting Lender shall be directly affected by such amendment, waiver or other modification.

(c) The Borrower will not, and will not permit Parent or any of the Borrower's Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Lender for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of any Loan Document unless such consideration is offered to be paid and is paid to all Lenders that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent,

waiver or agreement (it being understood that this provision shall not apply to (i) arrangement fees or other consideration payable to any financial institution acting as an arranger (or similar role) for any such consent, waiver or amendment or (ii) any consideration payable to the Administrative Agent in its capacity as such).

Section 12.03. Expenses, Indemnity; Damage Waiver.

(a) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including, without limitation, the reasonable and documented fees, charges and disbursements of counsel and other outside consultants for the Administrative Agent, the reasonable and documented travel, photocopy, mailing, courier, telephone and other similar expenses, including all Syndtrak (or similar service) expenses, and the reasonable and documented cost of environmental assessments and audits and surveys and appraisals, 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, the Permitted ABL Intercreditor Agreements 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 reasonable and documented costs, expenses, Taxes, assessments and other charges incurred by the Administrative Agent 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) if a Default has occurred, all documented out-of-pocket expenses incurred by the Administrative Agent or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender, in connection with the enforcement or protection of its rights in connection with this Agreement or any other Loan Document, including its rights under this Section 12.03, or in connection with the Loans made, including, without limitation, all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; *provided* that all Lenders shall be represented by the same legal counsel (which may be a law firm engaged by the Lenders or attorneys employed by a Lender or a combination of the foregoing) selected by the Lenders; *provided*, that if such legal counsel determines in good faith that representing all such Lenders would or could result in a conflict of interest under Laws or ethical principles applicable to such legal counsel or that a defense or counterclaim is available to a Lender that is not available to all such Lenders, then to the extent reasonably necessary to avoid such a conflict of interest or to permit unqualified assertion of such a defense or counterclaim, each affected Lender shall be entitled to separate representation by legal counsel selected by that Lender and reasonably acceptable to Borrower; and *provided* further that the Administrative Agent shall at all times be entitled to representation by separate legal counsel (which may be a law firm or attorneys employed by the Administrative Agent or a combination of the foregoing).

(b) THE BORROWER SHALL INDEMNIFY THE ADMINISTRATIVE AGENT AND 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, INCLUDING THE REASONABLE FEES, CHARGES AND DISBURSEMENTS OF ANY COUNSEL FOR ANY INDEMNITEE, INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF (i) THE EXECUTION OR DELIVERY OF THIS AGREEMENT OR 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 BY ANY

OTHER LOAN DOCUMENT (*PROVIDED* THAT THE INDEMNIFICATION IN THIS CLAUSE (i) SHALL NOT EXTEND TO DISPUTES SOLELY BETWEEN OR AMONG THE ADMINISTRATIVE AGENT, THE LENDERS OR THEIR RESPECTIVE AFFILIATES), (ii) THE FAILURE OF THE BORROWER OR ANY OTHER LOAN PARTY TO COMPLY WITH THE TERMS OF ANY LOAN DOCUMENT, INCLUDING THIS AGREEMENT, OR WITH ANY GOVERNMENTAL REQUIREMENT, (iii) ANY INACCURACY OF ANY REPRESENTATION OR ANY BREACH OF ANY WARRANTY OR COVENANT OF THE BORROWER OR ANY GUARANTOR SET FORTH IN ANY OF THE LOAN DOCUMENTS OR ANY INSTRUMENTS, DOCUMENTS OR CERTIFICATIONS DELIVERED IN CONNECTION THEREWITH, (iv) ANY LOAN OR THE USE OF THE PROCEEDS THEREFROM, (v) ANY OTHER ASPECT OF THE LOAN DOCUMENTS, (vi) THE OPERATIONS OF THE BUSINESS OF THE BORROWER AND THE OTHER LOAN PARTIES BY THE BORROWER AND THE OTHER LOAN PARTIES, (vii) ANY ASSERTION THAT THE LENDERS WERE NOT ENTITLED TO RECEIVE THE PROCEEDS RECEIVED PURSUANT TO THE SECURITY INSTRUMENTS, (viii) ANY ENVIRONMENTAL LAW APPLICABLE TO THE BORROWER OR ANY OTHER LOAN PARTY REGARDING ANY OF THEIR PROPERTIES OR OPERATIONS, INCLUDING, THE PRESENCE, GENERATION, STORAGE, RELEASE, THREATENED RELEASE, USE, TRANSPORT, DISPOSAL, ARRANGEMENT FOR DISPOSAL OR TREATMENT OF HAZARDOUS MATERIALS ON OR AT ANY OF THEIR PROPERTIES OR AT ANY OTHER PROPERTY TO WHICH HAZARDOUS MATERIALS GENERATED BY THE BORROWER, ANY OTHER LOAN PARTY OR THEIR OPERATIONS WERE OR ARE SENT FOR DISPOSAL, (ix) THE BREACH OR NON-COMPLIANCE BY THE BORROWER OR ANY OTHER LOAN PARTY WITH ANY ENVIRONMENTAL LAW APPLICABLE TO THE BORROWER OR ANY OTHER LOAN PARTY, (x) THE PAST OWNERSHIP BY THE BORROWER OR ANY OTHER LOAN PARTY 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, (xi) 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 OTHER LOAN PARTY, 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 THE OTHER LOAN PARTIES OR AT ANY OTHER PROPERTY TO WHICH HAZARDOUS MATERIALS GENERATED BY THE BORROWER, ANY OTHER LOAN PARTY OR THEIR OPERATIONS WERE OR ARE SENT FOR DISPOSAL, (xii) ANY ENVIRONMENTAL LIABILITY RELATED IN ANY WAY TO THE BORROWER OR ANY OF THE OTHER LOAN PARTIES, OR (xiii) ANY OTHER ENVIRONMENTAL, HEALTH OR SAFETY CONDITION IN CONNECTION WITH THE LOAN DOCUMENTS, OR (xiv) ANY ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY 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 (A) 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 (B) ARE IN RESPECT OF ANY PROPERTY FOR ANY OCCURRENCE ARISING FROM THE ACTS OR OMISSIONS OF THE ADMINISTRATIVE AGENT OR ANY LENDER DURING THE PERIOD AFTER WHICH SUCH PERSON, ITS SUCCESSORS OR ASSIGNS HAVE OBTAINED TITLE AND POSSESSION OF SUCH PROPERTY BY FORECLOSURE OR DEED IN LIEU OF FORECLOSURE; BUT EXCLUDING ANY OCCURRENCE REGARDING ANY VIOLATION OF ENVIRONMENTAL LAW FIRST OCCURRING BEFORE SUCH PERIOD AND ANY HAZARDOUS MATERIAL OR ENVIRONMENTAL CONDITION FIRST PRESENT ON THE PROPERTY BEFORE SUCH PERIOD.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent under Section 12.03(a) or (b), each Lender severally agrees to pay to the Administrative Agent such Lender's ratable share, based on the aggregate undrawn Commitments and the principal amount of Loans then outstanding (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) 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 the Administrative Agent in its capacity as such.

(d) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, 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 the use of the proceeds thereof.

(e) All amounts due under this Section 12.03 shall be payable not later than 10 Business Days after written demand therefor accompanied by appropriate documentation thereof.

Section 12.04. Successors and Assigns.

(a) 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, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 12.04. 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, Participants (to the extent provided in Section 12.04(c)) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders and their respective successors and assigns permitted hereby) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Subject to the conditions set forth in Section 12.04(b)(i), any Lender may assign to one or more Persons all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it), with notice to the Borrower and the Administrative Agent (failure to provide or delay in providing such notice shall not invalidate such assignment).

(i) Assignments shall be subject to the following additional conditions:

(A) the Borrower shall have consented to such assignment, such consent not to be unreasonably withheld, conditioned or delayed; *provided* that no such

consent of the Borrower shall be required (1) if an Event of Default has occurred and is continuing, (2) such assignment is to an Eligible Assignee; *provided further* 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, or (3) in the circumstances described in the Fee Letter;

(B) the Administrative Agent shall have consented to such assignment, such consent not to be unreasonably withheld, conditioned or delayed; *provided* that no such consent of the Administrative Agent shall be required if such assignment is to an Eligible Assignee;

(C) except in the case of (1) an assignment to an assignee that is a Lender immediately prior to giving effect to such assignment or an Affiliate of a Lender or (2) an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or 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) shall not be less than $5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, *provided* that no such consent of the Borrower shall be required if the assignee is an Eligible Assignee or if an Event of Default has occurred and is continuing;

(D) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(E) 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;

(F) the assignee, if it shall not already be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and

(G) in no event may any Lender assign all or a portion of its rights and obligations under this Agreement to the Borrower, any Affiliate of the Borrower (other than, for the avoidance of doubt, ARCC, Angelo Gordon and MSD) or a natural person.

(ii) Subject to Section 12.04(b)(iii) and the acceptance and recording thereof, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto 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 and Section 12.03). 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(c).

(iii) The Administrative Agent, acting solely for this purpose as an 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 Commitment of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent 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 and any Lender, at any reasonable time and from time to time upon reasonable prior notice. In connection with any changes to the Register, if necessary, the Administrative Agent will reflect the revisions on Annex I and forward a copy of such revised Annex I to the Borrower and each Lender. For the avoidance of doubt, the foregoing provisions are intended to comply with the registration requirements in United States Treasury Regulations Section 5f.103-1(c), or any successor provisions thereof, so that any payments made on a Loan or Note are considered to be paid on a debt instrument issued in "registered form" pursuant to such regulations, and all parties hereto shall construe the provisions of this Credit Agreement to ensure that the Loans or Notes will be considered to have been so issued.

(iv) Upon its 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(b).

(c) (i) Any Lender may, without the consent of the Borrower, sell participations to one or more banks or other Person (other than the Borrower, any Affiliate of the Borrower or a natural person) (a "**Participant**") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and 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, (C) the Borrower, the Administrative Agent 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, and (D) if the Participant or, if the Participant is a partnership, one or more direct or indirect partners of such Participant are claiming the portfolio interest exemption, such Participant may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, as applicable. 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(c)(ii), the Borrower agrees that each Participant shall be entitled to the benefits of Section 5.01, and Section 5.02 (in each case, without duplication of any benefits afforded the Lender granting such participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.04(b). Each Lender that sells a participation shall, acting solely for this purpose as an 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, letters of credit 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, letter of credit 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. For the avoidance of doubt, the foregoing provisions are intended to comply with the registration requirements in United States Treasury Regulations Section 5f.103-1(c), or any successor provisions thereof, so that any payments made on a Participant's interest are considered to be paid on a debt instrument issued in "registered form" pursuant to such regulations, and all parties hereto shall construe (and shall cause any participants to construe) the provisions of this Credit Agreement to ensure that any participant's interest will be considered to have been so issued.

(ii) A Participant shall not be entitled to receive any greater payment under Section 5.01 or Section 5.02 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 5.02 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 5.02(f) as though it were a Lender.

(d) 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, and this Section 12.04 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.

(e) 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, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent 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 and so long as the Commitments have not expired or terminated. The provisions of Section 5.01 (subject to Section 5.01(d)), Section 5.02 (subject to the proviso in the last sentence of Section 5.02(c)) and Section 12.03 (for a period of two years after the Maturity Date) 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, the expiration or termination of the Commitments or the termination of this Agreement, any other Loan Document or any provision hereof or thereof; *provided* that any time limitation on the survival of any provision hereunder shall be tolled for any claims filed prior to the expiration of such time limitation until two months after final, non-appealable adjudication of any such claim.

(b) To the extent that any payments on the 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 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.

(a) 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) 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.

(c) **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**.

(d) 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 which, 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 (e.g. .pdf) shall be effective as delivery of a manually executed counterpart of this Agreement.

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 law, to set off and apply any and all deposits (general or special, time or demand, provisional

or final) at any time held and other obligations (of whatsoever kind) at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any of and all the obligations of the Borrower or any other Loan Party owed to such Lender now or hereafter existing under this Agreement or any other Loan Document, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations may be unmatured. The rights of each Lender under this Section 12.08 are in addition to other rights and remedies (including other rights of setoff) which such Lender or its Affiliates may have.

Section 12.09. GOVERNING LAW; JURISDICTION; CONSENT TO SERVICE OF PROCESS.

(a) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THE LOAN DOCUMENTS SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EITHER CASE LOCATED IN NEW YORK COUNTY, 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. THIS SUBMISSION TO JURISDICTION IS NON-EXCLUSIVE AND DOES NOT PRECLUDE A PARTY FROM OBTAINING JURISDICTION OVER ANOTHER PARTY IN ANY COURT OTHERWISE HAVING JURISDICTION.

(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 LOAN 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 LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT 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 PARTY HERETO NOR ANY REPRESENTATIVE OR AGENT OR COUNSEL FOR ANY PARTY HERETO HAS REPRESENTED, EXPRESSLY OR

OTHERWISE, OR IMPLIED THAT SUCH PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (iv) ACKNOWLEDGES THAT IT HAS 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 and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, partners, funding sources, administrators, employees and agents, including accountants, legal counsel and other advisors and sub-advisors (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, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; *provided* that, subject to the Borrower's obligation to reimburse expenses under Section 12.03, it shall use commercially reasonable efforts to seek to obtain confidential treatment of such Information; *provided further*, that it shall not be liable for failure to obtain such confidential treatment, (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 or investor in, or any prospective assignee of or Participant or investor in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Swap Agreement relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) 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 or any Lender on a nonconfidential basis from a source other than the Borrower. For the purposes of this Section 12.11, "**Information**" means all information received from the Borrower or any other Loan Party relating to the Borrower or any other Loan Party and their businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any other Loan Party; *provided* that, in the case of information received from the Borrower or any other Loan Party 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. Notwithstanding anything herein to the contrary, "Information" shall not include, and the Borrower, the other Loan Parties, the Administrative Agent, each Lender and the respective Affiliates of each of the foregoing (and the respective partners, directors, officers, employees, agents, advisors and other representatives of the aforementioned Persons), and any other party, may disclose to any and all Persons, without limitation of any kind (a) any information with respect to the United States federal and state income tax treatment of the transactions contemplated hereby and any facts that may be relevant to understanding the United States federal or state income tax treatment of such transactions ("**tax structure**"), which facts shall not include for this purpose the names of the parties or any other person named herein, or information that would permit identification of the parties or such other persons, or any pricing terms or other nonpublic business or financial information that is unrelated to such tax treatment or tax structure, and (b) all materials of any kind (including opinions or other tax analyses) that are provided to the Borrower, the Administrative Agent or such Lender relating to such tax treatment or tax structure.

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, 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 Loans, it is agreed as follows: (i) 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 Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower); and (ii) 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 Obligations (or, to the extent that the principal amount of the 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 (A) 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 (B) 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. To the extent that Chapter 303 of the Texas Finance Code is relevant for the purpose of determining the Highest Lawful Rate applicable to a Lender, such Lender elects to determine the applicable rate ceiling under such Chapter by the weekly ceiling from time to time in effect. Chapter 346 of the Texas Finance Code does not apply to the Borrower's obligations hereunder.

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. No Third Party Beneficiaries. This Agreement, the other Loan Documents, and the agreement of the Lenders to make Loans are solely for the benefit of the Borrower, and no other Person (including, without limitation, any other Loan Party, any obligor, contractor, subcontractor, supplier or materialsman) shall have any rights, claims, remedies or privileges hereunder or under any other Loan Document against the Administrative Agent or any Lender for any reason whatsoever. Except as specified in Section 11.10 and Section 12.03, there are no third party beneficiaries.

Section 12.15. USA Patriot Act Notice. 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 "**Act**"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.

Section 12.16. No Advisory or Fiduciary Responsibility. 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 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 and the Lenders are arm's-length commercial transactions between the Borrower and its Subsidiaries, on the one hand, and the Administrative Agent 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 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) none of the Administrative Agent 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 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 none of the Administrative Agent 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 and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 12.17. Electronic Execution of Assignments and Certain Other Documents. The words "execution," "execute," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without

limitation Assignment and Assumptions, Borrowing Request Notices, amendments, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, 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; *provided* that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

Section 12.18. [Reserved].

Section 12.19. Cashless Settlement.

(a) Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue, or rollover all or a portion of its Loans or Commitments in connection with any refinancing, extension, loan modification, or similar transaction permitted by this Agreement pursuant to a cashless settlement mechanism approved by the Borrower, Administrative Agent, and such Lender.

Section 12.20. Acknowledgement and Consent to Bail-In of Affected 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 Affected 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 the applicable 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 the applicable Resolution Authority to any such liabilities arising hereunder that may be payable to it by any party hereto that is an Affected 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 Affected 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 the applicable Resolution Authority.

Section 12.21. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**" and each such QFC a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the

Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States.

[SIGNATURES BEGIN NEXT PAGE]

The parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

BORROWER:

VPROP OPERATING, LLC

By: V SandCo, LLC, its sole member

By: _____
Name:
Title:

PARENT:

V SANDCO, LLC

By: _____
Name:
Title:

ADMINISTRATIVE AGENT:

ARES CAPITAL CORPORATION, as Administrative Agent and Lender

By: _____
Name:
Title:

LENDERS:

ARES CAPITAL CORPORATION, as a Lender

By: _____
Name:
Title:

LENDERS:

ARES CAPITAL CP FUNDING LLC, as a Lender

By: _____
Name: _____
Title: _____

AC AMERICAN FIXED INCOME IV, L.P., as a Lender

By: Ares Capital Management LLC, its investment manager

By: _____
Name: _____
Title: _____

FEDERAL INSURANCE COMPANY, as a Lender

By: Ares Capital Management LLC, its investment manager

By: _____
Name: _____
Title: _____

LENDERS:

ARES CENTRE STREET PARTNERSHIP, L.P., as a Lender

By: Ares Centre Street GP, Inc., as general partner

By: _____
Name: _____
Title: _____

SC ACM PRIVATE DEBT FUND L.P., as a Lender

By: Ares Capital Management LLC, its investment advisor

By: _____
Name: _____
Title: _____

GREAT AMERICAN LIFE INSURANCE COMPANY, as a Lender

By: Ares Capital Management LLC, its investment manager

By: _____
Name: _____
Title: _____

LENDERS:

SA REAL ASSETS 20 LIMITED

By: Ares Management LLC, its investment manager

By: _____
Name: _____
Title: _____

PREMIA LV1 LTD., as a Lender

By: Ares Management LLC, its investment manager

By: Ares Capital Management LLC, as subadvisor

By: _____
Name: _____
Title: _____

LENDERS:

MSD CREDIT OPPORTUNITY FUND, L.P.

By: _____
Name: _____
Title: _____

SOF INVESTMENTS II, L.P.

By: _____
Name: _____
Title: _____

LENDERS:

AG ENERGY FUNDING, LLC
In respect of Series 17 as a Lender

By: _____
Name: _____
Title: _____

Exhibit 5

Schedule of Assumed Contracts and Leases

Schedule of Assumed Contracts and Leases

#	Counterparty Name	Counterparty Address	Debtor Counterparty	Contract or Lease Description (Contracts and Leases Include Any and All Amendments If Not Separately Listed)	Effective Date	Contract Status
1	Apache Corp.	PO BOX 27709 Houston, TX 77227-7709	Lonestar Prospects, Ltd.	Sand Purchase Agreement	2/1/2017	N/A
2	Apache Corp.	PO BOX 27709 Houston, TX 77227-7709	Lonestar Prospects, Ltd.	Sand Purchase Agreement	11/15/2017	N/A
3	Apache Corp.	PO BOX 27709 Houston, TX 77227-7709	Lonestar Prospects, Ltd.	Sand Purchase Agreement	2/25/2019	N/A
4	AT&T Corp.	208 S. Akard St. Ste 110 Dallas, TX 75202	Maalt Specialized Bulk, LLC	Service Agreement	5/9/2018	N/A
5	Birch Operations, Inc.	2918 N. County Road 1140 Midland, TX 79705	Lonestar Prospects, Ltd.	Service Agreement	7/1/2019	N/A
6	Castlerock Operating, LLC	111 Tower Drive San Antonio, TX 78232	Lonestar Prospects, Ltd.	Master Service Agreement	9/1/2019	N/A
7	Caterpillar Financial Services Corp.	2120 West End Ave Nashville, TN 37203	Lonestar Prospects, Ltd.	Freightliner M916A3; VIN - 1FULATCG08PZ72813; Contract # - 001-0027398-004; Agreement # - N/A	6/8/2018	N/A
8	Caterpillar Financial Services Corp.	2120 West End Ave Nashville, TN 37203	Lonestar Prospects, Ltd.	Caterpillar D6T Tractor; VIN - HTZ00706; Contract # - 001-0872445-000; Agreement # - 3157164	7/31/2017	N/A
9	Caterpillar Financial Services Corp.	2120 West End Ave Nashville, TN 37203	Lonestar Prospects, Ltd.	TL1255D Caterpillar Telehandler; VIN - ML701441; Contract # - 001-0943873-000; Agreement # - 3560414	10/30/2018	N/A
10	Caterpillar Financial Services Corp.	2120 West End Ave Nashville, TN 37203	Lonestar Prospects, Ltd.	980M Caterpillar Wheel Loader; VIN - XDJ01007; Contract # - 001-1026735-000; Agreement # - 3808532	3/1/2020	N/A
11	Caterpillar Financial Services Corp.	2120 West End Ave Nashville, TN 37203	Lonestar Prospects, Ltd.	Caterpillar 745-04 Articulated Truck; VIN - 3T602054; Contract # - 001-0998248-000; Agreement # - 3740867	10/26/2019	N/A
12	Caterpillar Financial Services Corp.	2120 West End Ave Nashville, TN 37203	Lonestar Prospects, Ltd.	Caterpillar 745-04 Articulated Truck; VIN - 3T602055; Contract # - 001-0998248-001; Agreement # - 3740867	10/26/2019	N/A
13	Caterpillar Financial Services Corp.	2120 West End Ave Nashville, TN 37203	Lonestar Prospects, Ltd.	Caterpillar 745-04 Articulated Truck; VIN - 3T602062; Contract # - 001-0998248-002; Agreement # - 3740867	10/26/2019	N/A
14	Caterpillar Financial Services Corp.	2120 West End Ave Nashville, TN 37203	Lonestar Prospects, Ltd.	Caterpillar 986k Wheel Loader; VIN - SWH00315; Contract # - 001-1030734-000; Agreement # - 3830403	2/20/2020	N/A
15	Caterpillar Financial Services Corp.	2120 West End Ave Nashville, TN 37203	Lonestar Prospects, Ltd.	Caterpillar 980M Wheel Loader; VIN - XDJ01156; Contract # - 001-1030766-000; Agreement # - 3832876	2/28/2020	N/A
16	Cudd Pumping Serices, Inc.	5610 Old Bullard Rd Tyler, TX 75703	Lonestar Prospects, Ltd.	Master Purchase Agreement	7/17/2018	N/A
17	DDC Ranch Consulting, LLC	101 S Betty Ave Monahans, TX 79756	Lonestar Prospects, Ltd.	Lease Agreement	5/1/2017	Contract in the process of being amended/replaced
18	El Paso Natural Gas Company, LLC	1001 Louisiana Street Houston, TX 77002	Lonestar Prospects, Ltd.	Interconnect Agreement	6/12/2017	N/A

Schedule of Assumed Contracts and Leases

#	Counterparty Name	Counterparty Address	Debtor Counterparty	Contract or Lease Description (Contracts and Leases Include Any and All Amendments If Not Separately Listed)	Effective Date	Contract Status
19	EOG Resources, Inc.	421 West 3rd Street Fort Worth, TX 76102	Lonestar Prospects, Ltd.	Sand Supply Agreement	1/1/2017	N/A
20	EOG Resources, Inc.	421 West 3rd Street Fort Worth, TX 76102	Lonestar Prospects, Ltd.	Sand Supply Agreement	1/1/2018	N/A
21	EOG Resources, Inc.	421 West 3rd Street Fort Worth, TX 76102	Lonestar Prospects, Ltd.	Purchase Agreement	6/24/2013	N/A
22	EOG Resources, Inc.	421 West 3Rd Street Suite 150 Fort Worth, TX 76102	Lonestar Prospects, Ltd.	Purchase Agreement	2/13/2017	N/A
23	Fort Worth & Western Railroad Co.	6300 Ridgelea Place Fort Worth, TX 76116	Lonestar Prospects, Ltd.	Demurrage Agreement	9/1/2012	N/A
24	Fort Worth & Western Railroad Co.	6300 Ridgelea Place Fort Worth, TX 76116	Lonestar Prospects, Ltd.	Demurrage Agreement	2/1/2017	N/A
25	GBH Properties LLC	3821 Collinwood Fort Worth, TX 76107	Maalt Specialized Bulk, LLC	Commercial Lease Agreement Fort Worth Corporate Office	5/1/2016	Contract in the process of being amended/replaced
26	GHMR Operations, LLC	1311 Ranchers Legacy Trail Fort Worth, TX 76126	Lonestar Prospects, Ltd.	Lease Agreement – Tolar Appx. 869 acres Hood County, Texas	12/1/2014	Contract in the process of being amended/replaced
27	GHMR Operations, LLC	1311 Ranchers Legacy Trail Fort Worth, TX 76126	Lonestar Prospects, Ltd.	First Amendment to Lease Agreement - Tolar	3/1/2017	Contract in the process of being amended/replaced
28	GHMR Operations, LLC	421 West 3Rd Street Suite 150 Fort Worth, TX 76102	Maalt, LP	Assignment and Assumption Agreement	4/19/2017	N/A
29	GHMR II, LLC	1311 Ranchers Legacy Trail Fort Worth, TX 76126	Maalt, LP	Lease Agreement - Apartments 1405 S. Gail Monahans, Texas	4/1/2019	Contract in the process of being amended/replaced
30	Hogg Ranch, LLC	101 S Betty Ave Monahans, TX 79756	Lonestar Prospects, Ltd.	Lease Agreement	4/28/2017	Contract in the process of being amended/replaced
31	Hogg Ranch, LLC	101 S Betty Ave Monahans, TX 79756	Lonestar Prospects, Ltd.	Lease Agreement	4/28/2017	Contract in the process of being amended/replaced
32	Hogg Ranch, LLC	101 S Betty Ave Monahans, TX 79756	Lonestar Prospects, Ltd.	Lease Agreement	1/31/2018	Contract in the process of being amended/replaced
33	Holt Texas, Ltd.	549 Jim Wright Freeway North Fort Worth, TX 76108	Lonestar Prospects, Ltd.	Caterpillar 980M Wheel Loader; VIN - HPD00832; Contract # - 001-0977626-000; Agreement # - 3832876	10/31/2016	N/A
34	John Goodlett	129 Trinity Bluffs Road Aledo, TX 76008	Lonestar Prospects, Ltd.	Royalty Agreement	3/16/2015	Contract in the process of being amended/replaced
35	Keane Frac, LP	11200 Westheimer Rd #777 Houston, TX 77042	Lonestar Prospects, Ltd.	Sand Purchase Agreement	8/1/2016	N/A
36	Keane Frac, LP	11200 Westheimer Rd #777 Houston, TX 77042	Lonestar Prospects, Ltd.	Sand Purchase Agreement	5/1/2018	N/A
37	Keane Frac, LP	11200 Westheimer Rd #777 Houston, TX 77042	Lonestar Prospects, Ltd.	Sand Purchase Agreement	9/17/2018	N/A
38	Keane Frac, LP	11200 Westheimer Rd #777 Houston, TX 77042	Lonestar Prospects, Ltd.	Sand Purchase Agreement	1/31/2019	N/A
39	Kestra Advisory Services, LLC	3221 Collinsworth Street Fort Worth, TX 76107	Maalt, LP; Vista Proppants and Logistics, LLC	Insurance Agreement	10/1/2018	N/A
40	Lonestar Prop 50, LLC	1500 N.W. Loop 567 Granbury, TX 76048	Lonestar Prospects, Ltd.	Lease / Mining Agreement	8/27/2015	Contract in the process of being amended/replaced
41	Lonestar Prop 50, LLC	1500 N.W. Loop 567 Granbury, TX 76048	Lonestar Prospects, Ltd.	Lease / Mining Agreement	10/18/2016	Contract in the process of being amended/replaced
42	Lonestar Prop 50, LLC	1500 N.W. Loop 567 Granbury, TX 76048	Lonestar Prospects, Ltd.	Lease / Mining Agreement	3/1/2019	Contract in the process of being amended/replaced
43	Lonestar Prop 50, LLC	1500 N.W. Loop 567 Granbury, TX 76048	Lonestar Prospects, Ltd.	Lease / Mining Agreement	3/1/2019	Contract in the process of being amended/replaced

Schedule of Assumed Contracts and Leases

#	Counterparty Name	Counterparty Address	Debtor Counterparty	Contract or Lease Description (Contracts and Leases Include Any and All Amendments If Not Separately Listed)	Effective Date	Contract Status
44	Marabou Energy Management, LLC	450 Gears Road Suite 850 Houston, TX 77067	Lonestar Prospects, Ltd.	Natural Gas Purchase & Sale Agreement	5/1/2017	N/A
45	Marabou Energy Management, LLC	450 Gears Road Suite 850 Houston, TX 77067	Lonestar Prospects, Ltd.	Agency Agreement	6/1/2017	N/A
46	Marabou Superior Pipeline, LLC	450 Gears Road Ste 850 Houston, TX 77067	Lonestar Prospects, Ltd.	Construction Agreement	6/9/2014	N/A
47	Marabou Superior Pipeline, LLC	450 Gears Road Ste 850 Houston, TX 77067	Lonestar Prospects, Ltd.	Construction Agreement	3/31/2017	N/A
48	Marathon Oil EF LLC	PO Box 22165 Tulsa, OK 74121-2165	Lonestar Prospects, Ltd.	Master Service Agreement	1/1/2020	N/A
49	Marathon Oil EF LLC	PO Box 22165 Tulsa, OK 74121-2165	Lonestar Prospects, Ltd.	Master Service Agreement	4/1/2020	N/A
50	Pattison Sand Company, LLC	701 First Street Clayton, IA 52049	Maalt, LP	Transload Agreement	7/12/2017	Agreement to be assumed in order to be assigned to
51	Priority Power Management, LLC	5012 Portico Way Midland, TX 79707	Lonestar Prospects, Ltd.	Service Agreement	8/1/2017	N/A
52	ProFrac Services, LLC	333 Shops Boulevard Willow Park, TX 76087	Lonestar Prospects, Ltd.	Master Purchase Agreement	11/27/2017	N/A
53	ProFrac Services, LLC	333 Shops Boulevard Willow Park, TX 76087	Lonestar Prospects, Ltd.	Master Purchase Agreement	6/10/2018	N/A
54	ProFrac Services, LLC	333 Shops Boulevard Willow Park, TX 76087	Lonestar Prospects, Ltd.	Master Purchase Agreement	6/10/2018	N/A
55	Pursuit Oil & Gas, LLC	840 Gessner Rd Houston, TX 77024	Lonestar Prospects, Ltd.	Master Service Agreement	8/14/2019	N/A
56	Sand Hill Land and Cattle, LLC	610 Fall Creek Hwy Granbury, TX 76049	Lonestar Prospects, Ltd.	Lease Agreement	4/14/2011	Contract in the process of being amended/replaced
57	Sand Hill Land and Cattle, LLC	610 Fall Creek Hwy Granbury, TX 76049	Lonestar Prospects, Ltd.	Lease Agreement	4/1/2012	Contract in the process of being amended/replaced
58	Sand Hill Land and Cattle, LLC	610 Fall Creek Hwy Granbury, TX 76049	Lonestar Prospects, Ltd.	Lease Agreement	1/1/2014	Contract in the process of being amended/replaced
59	Sand Hill Land and Cattle, LLC	610 Fall Creek Hwy Granbury, TX 76049	Lonestar Prospects, Ltd.	Lease Agreement	9/18/2014	Contract in the process of being amended/replaced
60	Sand Hill Land and Cattle, LLC	610 Fall Creek Hwy Granbury, TX 76049	Lonestar Prospects, Ltd.	Lease Agreement	11/4/2015	Contract in the process of being amended/replaced
61	Sand Hill Land and Cattle, LLC	610 Fall Creek Hwy Granbury, TX 76049	Lonestar Prospects, Ltd.	Lease Agreement	2/1/2019	Contract in the process of being amended/replaced
62	Sand Hill Land and Cattle, LLC	610 Fall Creek Hwy Granbury, TX 76049	Lonestar Prospects, Ltd.	Lease Agreement	3/1/2020	Contract in the process of being amended/replaced
63	Solaris Oilfield Site Service Operating, LLC	PO Box 208274 Dallas, TX 75320-8274	Lonestar Prospects, Ltd.	Storage Services Agreement	10/9/2019	N/A
64	Solaris Oilfield Technologies, LLC	9811 Katy Frwy Suite 900 Houston, TX 77024	Lonestar Prospects, Ltd.	Software Services Agreement	2/6/2018	N/A
65	TEP Barnett USA, LLC	301 Commerce St Fort Worth, TX 76102	Lonestar Prospects, Ltd.	Master Service Agreement	8/28/2019	N/A
66	Texas Pacifico Transportation, Ltd.	106 South Chadbourne St. San Angelo, TX 76903	Lonestar Prospects, Ltd.	Transportation Services Agreement	2/1/2017	N/A
67	Texas, Gonzales & Northern Railway Co.	5430 Lbj Fwy Ste 1020 Dallas, TX 75240	Maalt, LP	Unloading Track License Agreement	8/25/2017	N/A
68	TXU Energy	1717 Main Street 2000 Dallas, TX 75201	Lonestar Prospects, Ltd.	Natural Gas Purchase & Sale Agreement	8/31/2018	N/A
69	Union Pacific Railroad Company	8130 South Central Expressway Dallas, TX 75241	Lonestar Prospects, Ltd.	Amended Quote	1/1/2020	N/A
70	United Electric Cooperative Services	1200 Glen Rose Highway Stephenville, TX 76401	Lonestar Prospects, Ltd.	Service Agreement	6/13/2011	N/A

Schedule of Assumed Contracts and Leases

#	Counterparty Name	Counterparty Address	Debtor Counterparty	Contract or Lease Description (Contracts and Leases Include Any and All Amendments If Not Separately Listed)	Effective Date	Contract Status
71	United Electric Cooperative Services	1200 Glen Rose Highway Stephenville, TX 76401	Lonestar Prospects, Ltd.	Service Agreement	8/10/2017	N/A
72	Venado Oil & Gas LLC	13301 Galleria Circle Austin, TX 78738	Lonestar Prospects, Ltd.	Master Service Agreement	8/24/2019	N/A
73	Worsham-Steed Gas Storage, LLC	1201 Louisiana Street Suite 700 Houston, TX 77001	Lonestar Prospects, Ltd.	Interconnect Agreement	5/23/2017	N/A
74	Worsham-Steed Gas Storage, LLC	1201 Louisiana Street Suite 700 Houston, TX 77001	Lonestar Prospects, Ltd.	Interconnect Agreement	5/31/2017	N/A
75	Worsham-Steed Gas Storage, LLC	1201 Louisiana Street Suite 700 Houston, TX 77001	Lonestar Prospects, Ltd.	Service Agreement	5/23/2017	N/A

Exhibit 6

Schedule of Retained Causes of Action

Schedule of Retained Causes of Action

Pursuant to Article IV.O of the *Third Amended Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code*, filed on September 14, 2020 (as may be further amended, the "Plan"),[1] and in accordance with section 1123(b)(3) of the Bankruptcy Code, the Reorganized Debtors shall retain and shall have the exclusive right, authority, and discretion to (without further order of the Bankruptcy Court) determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw, or litigate to judgment any and all Retained Causes of Action (excluding Non-Insider Trade Creditor Avoidance Actions) that the Debtors or the Estates may hold against any Entity, whether arising before or after the Petition Date.

Retained Causes of Action is defined in the Plan to include all Causes of Action that belong to the Debtors, but shall not include Litigation Trust Causes of Action, Causes of Action against Released Parties, or Non-Insider Trade Creditor Avoidance Actions. Unless a Retained Cause of Action is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order, the Debtors expressly reserve such Retained Cause of Action (including any counterclaims) for later adjudication by the Reorganized Debtors. Therefore, no preclusion doctrine, including the doctrines of res judicata, collateral, estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Retained Causes of Action (including counterclaims) on or after the Confirmation Date.

Notwithstanding the foregoing paragraphs, and without limiting the generality of Article IV.O of the Plan, the Retained Causes of Action include Causes of Action related to: (i) insurance policies; (ii) tax credits and refunds; (iii) litigation and possible litigation other than Litigation Trust Causes of Action; (iv) confidentiality agreements; (v) accounts receivable and accounts payable; (vi) contracts and leases; (vii) current or former employee matters; (viii) deposits, adequate assurance postings, and other collateral postings; (ix) vendor obligations; (x) intellectual property; (xi) customer obligations; and (xii) environmental matters. Further descriptions of these categories of Retained Causes of Action are described in more detail below.

1. Causes of Action Related to Insurance Policies

Unless otherwise released by the Plan, Retained Causes of Action shall include all Causes of Action based in whole or in part upon any and all insurance contracts and insurance policies to which any Debtor or Reorganized Debtor is a party or pursuant to which the Debtors or Reorganized Debtors have any rights whatsoever, including Causes of Action against insurance carriers, reinsurance carriers, insurance brokers, third party administrators, underwriters, or surety bond issuers relating to coverage, indemnity, contribution, reimbursement, or any other matter; *provided, however*, that Retained Causes of Action shall not include such Causes of Action that are Litigation Trust Causes of Action.

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

Retained Causes of Action shall include all Causes of Action related the Debtors' insurance policy No. MAF773031-18 from Axis Insurance Company in connection with claim number ATL15899 and the Debtors' rights under the *Release and Settlement Agreement* made and entered into by and between Vista Proppants and Logistics, LLC and Axis Insurance Company.

2. Causes of Action Related to Tax Credits and Refunds

Unless otherwise released by the Plan, Retained Causes of Action shall include all Causes of Action against or related to all taxing authorities that owe or that may in the future owe money to the Debtors or Reorganized Debtors. Furthermore, Retained Causes of Action shall include all Causes of Action against or related to all taxing authorities who assert or may assert that the Debtors or Reorganized Debtors owe money to them.

Such Retained Causes of Action include, but are not limited to, all Causes of Action arising from or related to that certain litigation styled *Lonestar Prospects, Ltd., d/b/a Vista Sand v. Hood County Appraisal District* bearing Cause No. C2018373 and Cause No. C2020350 in the District Court of Hood County, Texas, 355th Judicial District in connection with 2018, 2019, and 2020 property taxes.

3. Causes of Action Related to Litigation and Possible Litigation Other than Litigation Trust Causes of Action

Unless otherwise released by the Plan, Retained Causes of Action shall include all Causes of Action against or related to all Entities that are party to or that may in the future become party to litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal, judicial or non-judicial, regardless of whether such Entity is included on the schedule below; *provided, however,* that Retained Causes of Action shall not include such Causes of Action that are Litigation Trust Causes of Action.

The following schedule includes Entities, affiliates, subsidiaries and successors and assigns, that are party to or that the Debtors believe may become party to litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal, judicial or non-judicial. **No Entity may rely on its omission the schedule as any indication that the Debtors or the Reorganized Debtors will not pursue any and all available Causes of Action against them.**

COUNTER-PARTY NAME	ADDRESS	DESCRIPTION OF PROCEEDING
AMERICAN STRUCTURAL METALS, INC.	777 LEHMANN WAY SOMERSET, WI 54025	All claims and causes of action arising from or related to that certain litigation styled *American Structural Metals, Inc. v. GHMR Operations, LLC, Sandview, Ltd. f/k/a Vista Sand, Vista Proppants and Logistics, LLC* bearing Cause No. CJ-2020-16 in connection with alleged nonpayment of equipment.

ASPHALT EQUIPMENT COMPANY, INC. D/B/A ALMIX	15851 DALLAS PARKWAY, NO. 650 FORT WAYNE, IN 46814	All claims and causes of action arising from or related to that certain litigation styled *Asphalt Equipment Company, Inc., d/b/a Almix v. Lonestar Prospects, Ltd., et al*. bearing Cause No. 1:19-cv-313 in connection with alleged nonpayment of equipment.
CHARLES DAVIS	5225 ORLEANS AVE. EL PASO, TX 79745	All claims and causes of action arising from or related to that certain EEOC discrimination action styled *Charles Davis v. Vista Proppants & Logistics* bearing Claim No. 453-2019-01389.
DAKOREY JOHNSON	306 ANDOVER DR. MESQUITE, TX 75149	All claims and causes of action arising from or related to that certain EEOC charge styled *Dakorey Johnson v. Vista Proppants and Logistics* bearing Claim No. 31C-2019-00950.
DARYL HARRY	2232 CONDOR ST. GRAND PRAIRIE, TX 75052	All claims and causes of action arising from or related to that certain EEOC charge styled *Daryl Harry v. Vista Proppants and Logistics* bearing Claim No. 450-2019-03921.
DONALD HAMILTON	108 HARRY DR NATCHITOCHES, LC 71457	All claims and causes of action arising from or related to that certain EEOC charge styled *Donald Hamilton v. Vista Proppants and Logistics* bearing Claim No. 453-2019-01586.
DWIGHT E. SUTTON	5319 LAKE JESSAMINE DR. ORLANDO, FL 32839	All claims and causes of action arising from or related to that certain EEOC discrimination action styled *Dwight E. Sutton v. MAALT Specialized Bulk LLC dba Vista Proppants and Logistics* bearing Claim No. 453-2020-00186.
HOOD COUNTY APPRAISAL DISTRICT	ATTN: EDDIE ROE, CHIEF APPRAISER 1902 W. PEARL STREET GRANBURY, TEXAS 76048	All claims and causes of action arising from or related to that certain litigation styled *Lonestar Prospects, Ltd., d/b/a Vista Sand v. Hood County Appraisal District* bearing Cause No. C2018373 and Cause No. C2020350 in the District Court of Hood County, Texas, 355th Judicial District in connection with 2018, 2019, and 2020 property taxes.
JUPITER MARKETING AND TRADING, LLC	15851 DALLAS PARKWAY, NO. 650 ADDISON, TX 75001	All claims and causes of action arising from or related to that certain litigation styled *MAALT, LP v. Jupiter Marketing and Trading, LLC* bearing Cause No. 352-307430-19 in connection with alleged breach of contract.
PRAEDA PROPPANTS & LOGISTICS, LLC	5815 ACTON CIRCLE, #101 GRANBURY, TX 76049	All claims and causes of action arising from or related to that certain litigation styled *Lonestar Prospects, Ltd. d/b/a Vista Proppants and Logistics v. Praeda Proppants & Logistics, LLC* bearing Cause No. 342-307685-19 in connection with allegedly unpaid account receivable.
PROFRAC SERVICES, LLC	333 SHOPS BOULEVARD WILLOW PARK, TX 76087	All claims and causes of action arising from or related to liquidated damages under agreements between Profrac Services, LLC and the Debtors.

SANDBOX LOGISTICS, LLC	1303 MCKINNEY STREET SUITE 2400 HOUSTON, TX 77010	All claims and causes of action arising from or related to the setoff of $774,601.85 by Sandbox Logistics, LLC in connection with amounts Lonestar Prospects allegedly owed Sand Box Logistics, LLC.
SEQUITUR PERMIAN, LLC	C/O MATTHEW A. KORNHAUSER DYLAN B. RUSSELL HOOVER SLOVACEK LLP GALLERIA TOWER II 5051 WESTHEIMER, SUITE 1200 HOUSTON, TX 77056 AND C/O PAUL STIPANOVIC GOSSETT, HARRISON, MILLICAN & STIPANOVIC, P.C. 2 S. KOENIGHEIM STREET SAN ANGELO, TX 76903	All claims and causes of action arising from or related to that certain litigation styled *MAALT, LP v. Sequitur Permian, LLC*, Case No. CV19-003, pending in the 51st Judicial District Court for Irion County, Texas and that certain litigation styled *MAALT, LP v. Sequitur Permian, LLC*, Adversary Proceeding No. 20-04064, pending in the Bankruptcy Court for the Northern District of Texas, Fort Worth Division.
SOUTHEASTERN CONSTRUCTION AND MAINTENANCE, INC.	1150 PEBBLEDALE RD. MULBERRY, FL 33860	All claims and causes of action arising from or related to that certain litigation styled *Southeastern Construction and Maintenance, Inc. v. Lonestar Prospects, Ltd. d/b/a Vista Sand, Lonestar Prospects, Ltd. d/b/a Vista Proppants and Logistics, and Lonestar Prospects Management, LLC* bearing Cause No. 048-308837-19 in connection with alleged nonpayment of equipment
STEPHEN DOUBLIN	105 HOOVER CIRCLE MONROE, LA 71203	All claims and causes of action arising from or related to that certain EEOC discrimination action styled *Stephen Doublin v. Vista Proppants and Logistics* bearing Claim No. 453-2019-01150.

4. Causes of Action Related to Confidentiality Agreements

Unless otherwise released by the Plan, Retained Causes of Action shall include all Causes of Action against or related to all Entities that are party to any confidentiality agreements with any Debtor or Reorganized Debtor.

5. Causes of Action Related to Accounts Receivable and Accounts Payable

Unless otherwise released by the Plan, Retained Causes of Action shall include all Causes of Action against or related to all Entities that owe or that may in the future owe money to the Debtors or Reorganized Debtors. Furthermore, Retained Causes of Action shall include all Causes of Action against or related to all Entities who assert or may assert that the Debtors or Reorganized Debtors owe money to them.

6. Causes of Action Related to Contracts and Leases

Unless otherwise released by the Plan, Retained Causes of Action shall include all Causes of Action, based in whole or in part upon any and all contracts and leases to which any Debtor or

Reorganized Debtor is a party or pursuant to which a Debtor or Reorganized Debtor has any rights whatsoever. The Retained Causes of Action include, without limitation, Causes of Action against vendors, suppliers of goods or services, or any other parties: (a) for overpayments, back charges, duplicate payments, improper holdbacks, deposits, warranties, guarantees, indemnities, recoupment, or setoff; (b) for wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (c) for failure to fully perform or to condition performance on additional requirements under contracts with any Debtor before the assumption or rejection, if applicable, of such contracts; (d) for payments, deposits, holdbacks, reserves, or other amounts owed by any creditor, utility, supplier, vendor, insurer, surety, factor, lender, bondholder, lessor, or other party; (e) for any liens, including mechanic's, artisan's, materialmen's, possessory, or statutory liens held by any Debtor; (f) counterclaims and defenses related to any contractual obligations; (g) any turnover actions arising under section 542 or 543 of the Bankruptcy Code; (h) for unfair competition, interference with contract or potential business advantage, breach of contract, infringement of intellectual property, or any business tort claims; and (i) any accumulated service credits, both those that may apply to future vendor invoices and those from which any Debtor may be entitled to receive a refund; *provided, however*, that Retained Causes of Action shall not include such Causes of Action that are Litigation Trust Causes of Action.

Such Retained Causes of Action include, but are not limited to, all Causes of Action arising from or related to liquidated damages under agreements between Profrac Services, LLC and the Debtors.

7. Causes of Action Related to Current or Former Employee Matters

Unless otherwise released by the Plan, Retained Causes of Action shall include all Causes of Action against or related to all current or former employees that are party to or that may in the future become party to any workers' compensation claims or actions, litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal, judicial or non-judicial; *provided, however*, that Retained Causes of Action shall not include such Causes of Action that are Litigation Trust Causes of Action.

8. Causes of Action Related to Deposits, Adequate Assurance Postings, and Other Collateral Postings

Unless otherwise released by the Plan, Retained Causes of Action shall include all Causes of Action based in whole or in part upon any and all postings of a security deposit, adequate assurance payment, or any other type of deposit or collateral.

9. Causes of Action Related to Vendor Obligations

Unless otherwise released by the Plan, Retained Causes of Action shall include all Causes of Action against or related to all vendors that owe or may in the future owe money or other

obligations to the Debtors or the Reorganized Debtors, whether for unpaid invoices; unreturned, missing, or damaged inventory; indemnification; warranties; any turnover actions arising under section 542 or 543 of the Bankruptcy Code; or any other matter whatsoever.

10. Causes of Action Related to Intellectual Property

Unless otherwise released by the Plan, Retained Causes of Action shall include any Causes of Action for unfair competition, licensing or licensing agreements, interference with contract or potential business advantage, conversion, infringement of intellectual property, or other business tort claims.

11. Causes of Action Related to Customer Obligations

Unless otherwise released by the Plan, Retained Causes of Action shall include all Causes of Action against or related to all customers that owe or may in the future owe money to the Debtors or the Reorganized Debtors, whether for unpaid invoices; unreturned, missing, or damaged inventory, warranties, or any other matter whatsoever.

12. Causes of Action Related to Environmental Matters

Unless otherwise released by the Plan, Retained Causes of Action shall include all Causes of Action against or related to all Entities or potentially responsible parties that owe or that may in the future owe money to the Debtors or Reorganized Debtors in connection with any environmental matters. Furthermore, Retained Causes of Action shall include all Causes of Action against or related to all Entities or potentially responsible parties who assert or may assert that the Debtors or Reorganized Debtors owe money to them in connection with any environmental matters.

Exhibit 7

Schedule of Litigation Trust Causes of Action

Schedule of Litigation Trust Causes of Action

Pursuant to the *Third Amended Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code* filed on September 14, 2020 (as may be further amended, the "Plan"),[1] the Litigation Trust is being established as a grantor trust for the purpose of liquidating and distributing the Litigation Trust Assets to the Litigation Trust Beneficiaries in accordance with the Plan. Litigation Trust Assets is defined in the Plan to include: (i) the Litigation Trust Causes of Action and (ii) the GUC Cash Settlement.

The Plan provides that the Litigation Trust Causes of Action are those Causes of Action set forth on the Schedule of Litigation Trust Causes of Action to be included in the Plan Supplement. Accordingly, unless otherwise agreed among the Debtors, the Committee, and the Required Consenting Lenders, the following shall constitute Litigation Trust Causes of Action under the Plan:

(i) the Standing Motion Claims against the ABL Lender;

(ii) all Claims or Causes of Action against RJS Holdings, LLC; R.J. Sikes; Lisa Sikes; Future New Deal, Ltd.; M&J Partnership, Ltd.; Lonestar Prospects Holding Company, L.L.C.; Gary Humphreys; Marty Robertson; and FR Sands Holdings, LLC, and any subsequent transferees thereof, arising out of the disbursement by the Debtors on or about November 9, 2017, of $85 million, or approximately $85 million, in connection with the buy-out of the direct and indirect interests of R.J. Sikes and/or entities and persons affiliated with or otherwise related to R.J. Sikes in Vista HoldCo by the other members of Vista HoldCo;

(iii) without duplication of item (ii) above, claims against the following persons and entities (and subsequent transferees thereof) based on transfers made by any of the Debtors after June 9, 2016, to or for the benefit of: GHMR Operations, LLC; Gary Humphreys; Marty Robertson; other entities controlled by Gary Humphreys and/or Marty Robertson; and persons related to Gary Humphreys or Marty Robertson;

(iv) without duplication of items (ii) and (iii) above, any and all claims related to any prepetition contracts or agreements between any Debtor and GHMR Operations, LLC; Gary Humphreys; Marty Robertson; other entities controlled by Gary Humphreys and/or Marty Robertson; and persons related to Gary Humphreys or Marty Robertson to the extent that any such contracts or agreements have not been assumed by the Debtors or the Reorganized Debtors by the date that is 45 days after the Effective Date of the Plan; and

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

(v) breach of duty claims on behalf of the respective estates of each of the Debtors (including Lonestar Prospects, Ltd.) against (a) prepetition officers, directors, general partners, managing partners, members, managing members, and managers of the respective Debtors, excluding any Released Parties, and (b) persons or entities that directly or indirectly controlled such respective Debtors at any time prior to the Petition Date (including Gary Humphreys and Marty Robertson, but excluding any Released Parties).

Exhibit 8

Litigation Trust Agreement

LITIGATION TRUST AGREEMENT

PREAMBLE

This Litigation Trust Agreement (the "**Agreement**") is entered into by and among Vista Proppants and Logistics, LLC and its debtor affiliates, as debtors and debtors in possession (collectively, the "**Debtors**") and Ankura Trust Company, not individually, but solely in its capacity as trustee (the "**Litigation Trustee**" and collectively together with the Debtors, the "**Parties**") of the litigation trust established in accordance with the *Third Amended Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code*, dated September 14, 2020 (including all exhibits and supplements thereto, as the same may be further amended, modified, or supplemented from time to time, the "**Plan**").[1]

RECITALS

WHEREAS, on June 9, 2020 (the "**Petition Date**"), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas (the "**Bankruptcy Court**") commencing their Chapter 11 cases (the "**Chapter 11 Cases**");

WHEREAS, on June 25, 2020, the United States Trustee for Region 6 (the "**United States Trustee**") appointed an official committee of unsecured creditors in the Chapter 11 Cases (the "**Committee**");

WHEREAS, on August 3, 2020, the Committee filed its *Motion of the Official Committee of Unsecured Creditors for Order Granting (I) Leave, Standing and Authority to Commence and Prosecute Certain Claims on Behalf of the Debtors' Estates and (II) Related Relief*, through which it sought standing on behalf of the Debtors and their estates to assert certain claims, including claims against PlainsCapital Bank (the claims against PlainsCapital Bank are referred to herein as the "**Committee Claims**");

WHEREAS, on September 14, 2020, the Debtors filed the Plan;

WHEREAS, on [___], 2020, the Bankruptcy Court entered an order confirming the Plan (the "**Confirmation Order**");

WHEREAS, the Plan provides for the creation of the Litigation Trust, as of the Effective Date, to (i) hold, administer, prosecute and liquidate the Litigation Trust Assets, (ii) distribute the proceeds of the Litigation Trust Assets to the Litigation Trust Beneficiaries, (iii) distribute the GUC Cash Settlement Distribution to the holders of Allowed Class 6 Claims other than the Term Loan Lender Class 6 Claims, and (iv) reconcile General Unsecured Claims, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement;

WHEREAS, the Plan provides that, on the Effective Date, the Litigation Trust Loan shall be provided to the Litigation Trust, which shall be repaid by the net proceeds, if any, from

[1] Capitalized terms used herein and not otherwise defined herein or when first used shall have the meanings set forth in the Plan.

the Litigation Trust Causes of Action (other than from the PlainsCapital Recovery) in any case prior to any distribution to the Litigation Trust Beneficiaries from the Litigation Trust Causes of Action with the exception of distributions of the PlainsCapital Recovery;

WHEREAS, the Plan provides that, on the Effective Date, the GUC Cash Settlement shall be funded into the Litigation Trust as follows: (i) $2,000,000 consisting of (a) $1,750,000 in Cash, plus (b) $250,000 as proceeds of the Litigation Trust Loan, ***plus*** (ii) the GUC Cash Settlement Adjustment. The GUC Cash Settlement Adjustment shall be distributed directly to the Litigation Trust within five (5) business days of a final determination thereof. Subject to the terms of this Agreement and the Plan, $1,000,000 of the GUC Cash Settlement shall be allocated to the GUC Cash Settlement Distribution. The remainder of the GUC Cash Settlement plus the GUC Cash Settlement Adjustment shall be allocated to funding the Litigation Trust;

WHEREAS, this Agreement is executed to establish the Litigation Trust and to facilitate the Plan;

WHEREAS, the Litigation Trust is created on behalf of, and for the benefit of, the Litigation Trust Beneficiaries;

WHEREAS, the Litigation Trust is intended to qualify as a "liquidating trust" under the United States Internal Revenue Code of 1986, as amended, (the "**IRC**") and the Treasury Regulations promulgated thereunder, specifically Treasury Regulation section 301.7701-4(d), and as such be treated as a "grantor trust" for federal income tax purposes with the Litigation Trust Beneficiaries treated as the grantors and owners of the Litigation Trust, and in that regard it is the Parties' intention that this Agreement shall treat the transfers in trust described herein as transfers to the Litigation Trust Beneficiaries for all purposes of the Internal Revenue Code of 1986, as amended (including, sections 61(a)(12), 483, 1001, 1012, and 1274). All the parties and Litigation Trust Beneficiaries shall treat the transfers in trust as if all the transferred assets, including all the Litigation Trust Assets, had been first transferred to the Litigation Trust Beneficiaries and then transferred by the Litigation Trust Beneficiaries.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein and in the Plan and the Confirmation Order, the Parties agree as follows:

ARTICLE I.
NAME OF TRUST AND LITIGATION TRUSTEE

1.1. Appointment of Litigation Trustee

The legal name of the Litigation Trust shall be "Vista Litigation Trust." [____] is hereby appointed to serve as the initial Litigation Trustee under the Plan and hereby accepts this appointment and agrees to serve in such capacity effective upon the Effective Date of the Plan and pursuant to the terms of the Confirmation Order, the Plan, this Agreement, and the engagement letter dated [____], 2020, that is attached hereto as **Exhibit A** (the "**Engagement Letter**"). A successor Litigation Trustee shall be appointed as set forth in Section 11.1 in the event the Litigation Trustee is removed or resigns pursuant to this Agreement or if the Litigation Trustee otherwise vacates the position.

ARTICLE II.
DUTIES AND POWERS OF THE LITIGATION TRUSTEE

2.1. Generally

The Litigation Trustee shall be responsible for (a) liquidating and administering (or abandoning, as the case may be) the Litigation Trust Assets, including the Litigation Trust Causes of Action and the GUC Cash Settlement, (b) taking actions on behalf of, and representing, the Litigation Trust, (c) reconciling General Unsecured Claims, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement, and (d) distributing the GUC Cash Settlement Distribution to holders of Allowed Class 6 Claims (other than Term Loan Lender Class 6 Creditors) in accordance with the Plan. The Litigation Trustee shall have the authority to bind the Litigation Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity of Litigation Trustee and not individually.

2.2. Scope of Authority of Litigation Trustee

Within the limitations set forth herein, and subject to the Litigation Trust oversight committee (the "**Oversight Committee**") and the provisions set forth in this Agreement, the responsibilities and authority of the Litigation Trustee shall include, without limitation: (i) holding and administering the Litigation Trust Assets; (ii) evaluating and determining strategy with respect to the Litigation Trust Causes of Action and litigating the Litigation Trust Causes of Action pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, or settling, transferring, releasing or abandoning any and all Litigation Trust Causes of Action on behalf of the Litigation Trust; (iii) calculating, implementing and disbursing distributions on account of the Litigation Trust Assets to the Litigation Trust Beneficiaries and in accordance with the Plan; (iv) distributing the GUC Cash Settlement Distribution to the holders of Allowed Class 6 Claims other than the Term Loan Lender Class 6 Claims; (v) filing all required tax returns for the Litigation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a); (vi) retaining Litigation Trustee Professionals and Litigation Trustee Non-Professionals (both as defined herein); (vii) receiving reasonable compensation for performing services as Litigation Trustee in accordance with the Engagement Letter and paying the reasonable fees, costs and expenses of any Litigation Trustee Professionals and Litigation Non-Professionals in accordance with the applicable provisions of this Agreement; (viii) providing periodic reports and updates to the Oversight Committee regarding the status of the administration of the Litigation Trust and the Litigation Trust Assets and consulting with the Oversight Committee regarding the status of the Litigation Trust Causes of Action, the Litigation Trust Interests, and any other matters addressed in this Agreement, all in connection with the Oversight Committee's role of overseeing the implementation of the Plan; (ix) repaying the Litigation Trust Loan in accordance with the terms set forth in the Plan and the related promissory note (the "**Litigation Trust Promissory Note**"); (x) reconciling General Unsecured Claims as set forth in Article VII.A of the Plan; and (xi) carrying out such other responsibilities not specifically set forth herein as may be vested in the Litigation Trustee pursuant to the Confirmation Order, the Plan, this Agreement, or other Bankruptcy Court order, or as may be necessary and proper to carry out the provisions of the Confirmation Order, the Plan or this Agreement.

2.3. Obligations to Litigation Trust and Litigation Trust Beneficiaries

The Litigation Trustee's actions as Litigation Trustee will be subject to standards required under Texas law.

2.4. Additional Powers of Litigation Trustee

In connection with the administration of the Litigation Trust, subject to and except as otherwise set forth in the Confirmation Order, the Plan, or this Agreement, the Litigation Trustee is hereby authorized to perform those acts necessary to accomplish the purposes of the Litigation Trust. Without limiting, but subject to, the foregoing, the Litigation Trustee shall, unless otherwise provided in this Agreement and subject to the limitations contained herein and in the Confirmation Order and the Plan:

(1) collect and liquidate the Litigation Trust Assets under the jurisdiction of the Bankruptcy Court and pursuant to the terms of the Plan;

(2) hold legal title (on behalf of the Litigation Trust as Litigation Trustee, but not individually) to the Litigation Trust Assets, including, but not limited to, the Litigation Trust Causes of Action and the GUC Cash Settlement;

(3) subject to sections 6.1(a) and 6.4 below, assert, prosecute, object to, pursue, compromise, and settle General Unsecured Claims, other than the Term Loan Lender Class 6 Claims (the "**Claim(s)**") only and, in accordance with the Litigation Trustee's reasonable business judgment, all matters affecting the Claims, including, without limitation, the Disputed Claims Reserve, Disputed Claims and/or other Litigation Trust Causes of Action related thereto, in accordance with the terms set forth in Article VII of the Plan and except as provided therein, without further order of the Bankruptcy Court;

(4) assert and enforce all legal or equitable remedies and defenses belonging to the Debtors or their Estates solely with respect to the Claims and the Litigation Trust Causes of Action, including, without limitation, setoff, recoupment, and any rights under Bankruptcy Code section 502(d);

(5) take such actions that the Litigation Trustee deems appropriate in its reasonable business judgment against any Person with respect to Litigation Trust Causes of Action and commence, subject to the approval of the Oversight Committee, any process or proceeding in the Bankruptcy Court or in any court of competent jurisdiction in accordance with applicable laws, except as otherwise set forth in this Agreement or the Plan;

(6) be expressly authorized to appeal and/or prosecute the appeal of any order on the Standing Motion, *provided, that* the member of the Oversight Committee appointed by the Term Loan Lender Class 6 Creditors shall recuse themselves of any decisions regarding the prosecution of the Standing Motion;

(7) make distributions to the Litigation Trust Beneficiaries in accordance with the terms of the Plan, the Litigation Trust Promissory Note, and Article IV of this Agreement;

(8) repay the Litigation Trust Loan in accordance with the terms set forth in the Plan and the Litigation Trust Promissory Note;

(9) proceed with and employ all discovery devices permitted under applicable law, including Rule 2004 of the Bankruptcy Rules, in order to investigate any Claims or Litigation Trust Causes of Action;

(10) as provided in the bylaws adopted pursuant to section 18.8 hereof, in consultation with the Oversight Committee, employ, without further order of the Bankruptcy Court, Litigation Trustee Professionals and Litigation Trustee Non-Professionals to assist the Litigation Trustee in carrying out the Litigation Trustee's duties under the Plan and under this Agreement, and compensate and reimburse the expenses of the Litigation Trustee Professionals and the Litigation Trustee Non-Professionals on the terms to be agreed to by the Litigation Trustee and the Litigation Trustee Professionals and the Litigation Trustee Non-Professionals without further order of the Bankruptcy Court, to the extent set forth in this Agreement;

(11) invest Cash in accordance with section 2.7 of this Agreement and the Litigation Trust Promissory Note, withdraw and make distributions of Cash to the Litigation Trust Beneficiaries and pay obligations incurred by the Litigation Trustee from the Litigation Trust Expense Fund (as hereinafter defined) as set forth and in accordance with the Plan;

(12) in consultation with the Oversight Committee, be expressly authorized and required to pay expenses and make disbursements necessary to preserve, liquidate, and enhance the Litigation Trust Assets;

(13) be expressly authorized to purchase such insurance coverage as the Litigation Trustee, in its sole discretion, deems necessary and appropriate with respect to the (i) liabilities and obligations of the Litigation Trustee; and (ii) real and personal property which may be or may become Litigation Trust Assets;

(14) be expressly authorized to incur any reasonable and necessary expenses in liquidating and converting the Litigation Trust Assets to Cash, or otherwise administering the Litigation Trust, as set forth in the Confirmation Order, the Plan or this Agreement;

(15) execute and deliver all documents, and take all actions, necessary to implement this Agreement, and, to the extent required, acting with the authority of an officer, director, or manager (as applicable) of the Debtors when taking such actions;

(16) implement and/or enforce all provisions of the Plan as they relate to Litigation Trust Assets or Claims;

(17) assert, subject to section IV.P of the Plan, as the Litigation Trustee deems appropriate, any attorney-client privilege or similar privilege belonging to any of the Debtors immediately prior to the Effective Date of the Plan to the extent related to Litigation Trust Causes of Action;

(18) establish the Disputed Claims Reserve as well as any other reserve as may be necessary as set forth in the Plan, and make distributions from such reserves;

(19) to the extent the Litigation Trustee deems it necessary or appropriate, and in consultation with the Oversight Committee, value the Litigation Trust Assets based on the Litigation Trustee's good faith determination, which valuation shall be used consistently by the Litigation Trustee, by all Parties and by the Litigation Trust Beneficiaries for all federal income tax purposes, and seeking resolution from the Bankruptcy Court of any dispute related to such valuation; and

(20) perform such other powers as may be vested in or assumed by the Litigation Trustee pursuant to this Agreement, the Plan, other Bankruptcy Court order, or as may be needed or appropriate to carry out the provisions of the Plan and this Agreement.

2.5. General Authority of the Litigation Trustee

Unless specifically stated otherwise herein, the Litigation Trustee shall not be required to obtain Bankruptcy Court approval with respect to any proposed action or inaction: (a) authorized in this Agreement, or (b) specifically contemplated in the Confirmation Order or the Plan.

2.6. Limitation of Litigation Trustee's Authority; No Ongoing Business

(a) The Litigation Trustee shall have no power or authority except as set forth in this Agreement or in the Confirmation Order or the Plan.

(b) For federal income tax purposes, the Litigation Trustee shall not be authorized to engage in any trade or business with respect to the Litigation Trust Assets or any proceeds therefrom except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Litigation Trust. The Litigation Trustee shall take such actions consistent with the prompt orderly liquidation of the Litigation Trust Assets as required by applicable law and consistent with the treatment of the Litigation Trust as a liquidating trust under Treasury Regulation section 301.7701-4(d), to the extent such actions are permitted by this Agreement.

2.7. Investment and Safekeeping of Litigation Trust Assets

All monies and other assets received by the Litigation Trustee shall, until distributed or paid over as herein provided, be segregated from all other monies and assets of the Litigation Trustee, including the GUC Cash Settlement Distribution, and further, shall be held in trust for the benefit of the Litigation Trust Beneficiaries. The Litigation Trustee shall be responsible for establishing and maintaining any segregated, reserve or escrow accounts as are required to carry out the obligations of the Litigation Trust under the Plan.

The Litigation Trustee shall promptly invest any such monies in the manner set forth in this Section 2.7, but shall otherwise be under no liability for interest or income on any monies received by the Litigation Trust hereunder and held for distribution or payment to the Litigation Trust Beneficiaries, except as such interest shall actually be received. Investment of

any monies held by the Litigation Trust shall be administered in accordance with the general duties and obligations hereunder. The right and power of the Litigation Trustee to invest the Litigation Trust Assets, the proceeds thereof, or any income earned by the Litigation Trust, shall be limited to the right and power to (i) invest such Litigation Trust Assets (pending distributions in accordance with the Confirmation Order, the Plan or this Agreement) in (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof, or (c) an open-ended management investment company, registered under the Investment Company Act of 1940 that is regulated as a "money market fund" pursuant to Rule 2a-7 under the Investment Company Act of 1940, provided that the fund: (1) invests exclusively in United States Treasury bills and United States Treasury Notes owned directory or through repurchase agreements; (2) has received the highest money market fund rating from a nationally recognized statistical rating organization, such as Standard & Poor's or Moody's; (3) has agreed to redeem funds shares in cash, with payment being made no later than the business day following a redemption request by a shareholder, except in the event of an unscheduled closing of the Federal Reserve Banks or the New York Stock Exchange; and (4) has adopted a policy that it will notify its shareholders 60 days prior to any change in its policy (A) to invest exclusively in Treasury Securities as described in (1) above or (B) to redeem fund shares in cash no later than the business day following a redemption request by the shareholder, with limited exceptions for unscheduled closings of Federal Reserve Banks or the New York Stock Exchange; or (ii) deposit such assets in demand deposits at any bank or trust company, (collectively, the "**Permissible Investments**") *provided*, *however*, that the scope of any such Permissible Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the guidelines of the Internal Revenue Service of the United States of America (the "**IRS**"), whether set forth in IRS rulings, other IRS pronouncements or otherwise.

ARTICLE III.
TERM AND COMPENSATION FOR LITIGATION TRUSTEE

3.1. Compensation

(a) The Litigation Trustee shall be entitled to receive compensation for services rendered on behalf of the Litigation Trust and reimbursement of expenses as provided in the Engagement Letter or such additional compensation as ordered by the Bankruptcy Court or approved by the Oversight Committee.

(b) All compensation and other amounts payable to the Litigation Trustee shall be paid out of the Litigation Trust Expense Fund (as defined hereinafter), subject to any applicable limitations or restrictions set forth in the Confirmation Order, the Plan, this Agreement or the Engagement Letter.

3.2. Termination

The duties, responsibilities and powers of the Litigation Trustee and the Oversight Committee will terminate on the date the Litigation Trust is dissolved and terminated pursuant to Section 16.1, or by an order of the Bankruptcy Court.

3.3. No Bond

The Litigation Trustee shall serve without bond.

3.4. Removal

The Litigation Trustee may be removed only for cause by the Oversight Committee or a Final Order of the Bankruptcy Court and after notice and a hearing; *provided however*, that the Litigation Trustee may not be removed until a successor Litigation Trustee has been named or is capable of being named immediately upon such removal. For purposes of removing the Litigation Trustee, "cause" shall mean gross negligence, breach of fiduciary duty, breach of trust, or reckless or willful mishandling of the Litigation Trust Assets. Any undisputed fees and unreimbursed expenses that have been properly incurred by the Litigation Trustee in accordance with the terms of this Agreement and the Engagement Letter that are owing to the Litigation Trustee as of the date of the Litigation Trustee's removal shall be paid to the Litigation Trustee within 5 days of the removal date.

3.5. Resignation

The Litigation Trustee may resign by giving not less than sixty (60) days prior written notice thereof to the Oversight Committee and the Bankruptcy Court.

ARTICLE IV.
PROVISIONS REGARDING DISTRIBUTIONS

4.1. Priority and Method of Distributions

(a) Generally. The Litigation Trustee, on behalf of the Litigation Trust, or such other person or entity as may be designated in accordance with this Agreement, will make distributions to the Litigation Trust Beneficiaries in accordance with this Agreement and in accordance with the provisions of the Plan. Whenever any distribution to be made under the Confirmation Order, the Plan or this Agreement is due on a day other than a Business Day, such distribution shall be made, without interest, on the immediately succeeding Business Day, but any such distribution will have been deemed to have been made on the date due.

(b) Distribution of Litigation Trust Assets and Proceeds Thereof. All Litigation Trust Assets and all distributions of proceeds of the Litigation Trust Assets on account of the Litigation Trust Interests to the Litigation Trust Beneficiaries shall be distributed in accordance with the terms of this Agreement and the Plan. On or before the date that is 180 days after the Effective Date, which may be extended by the Bankruptcy Court for cause upon motion by the Litigation Trustee, each holder of an Allowed General Unsecured Claim that is not a Term Loan Lender Class 6 Creditor shall receive from the Disbursing Agent its Pro Rata share of the GUC

Cash Settlement Distribution. Periodically thereafter, each holder of an Allowed General Unsecured Claim (including Term Loan Lender Class 6 Creditors holding Allowed Term Loan Deficiency Claims) shall receive from the Disbursing Agent its Pro Rata share of the distributions in respect of its Litigation Trust Interests, subject to the sharing mechanism set forth immediately below.

In the event that the Litigation Trustee achieves any recoveries from the Litigation Trust Causes of Action, then holders of Litigation Trust Interests that are not Term Loan Lender Class 6 Creditors shall receive their *pro rata* share of the first $4,000,000 recovered by the Litigation Trust after payment of Litigation Trust expenses, including repayment of the Litigation Trust Loan. Thereafter, any recoveries achieved by the Litigation Trustee shall be split 60/40, respectively, between (x) holders of Litigation Trust Interests that are Non-Term Loan Lender Class 6 Creditors and (y) holders of Litigation Trust Interests that are Term Loan Class 6 Creditors. To the extent that the Litigation Trustee achieves a PlainsCapital Recovery, Term Loan Class 6 Creditors shall not share in any such recovery nor shall the PlainsCapital Recovery be utilized to repay the Litigation Trust Loan.

(c) Periodic Distribution Requirement. Subject to the provisions of this Article IV and only to the extent required to maintain grantor trust tax status, the Litigation Trustee is required to distribute at least once per twelve-month period to the Litigation Trust Beneficiaries the Litigation Trust's net income plus all net proceeds from the sale, realization, settlement or liquidation of the Litigation Trust Assets, except that the Litigation Trustee may retain an amount of net proceeds or net income reasonably necessary to maintain the value of the Litigation Trust Assets, to satisfy current and projected expenses of the Litigation Trust, and to meet Claims and contingent liabilities (including Disputed Claims). The Litigation Trustee shall consult with the Oversight Committee prior to making any distributions to the Litigation Trust Beneficiaries.

(d) Withholding. The Litigation Trustee may withhold from amounts distributable to any person or entity any and all amounts, to be determined in the Litigation Trustee's reasonable sole discretion, required by any law, regulation, rule, ruling, directive or other government equivalent of the United States or of any political subdivision thereof. To the extent that amounts are so withheld and paid over to the appropriate governmental entity, such amounts shall be treated for all purposes of this Agreement as having been paid to the person or entity in respect of whom such deduction and withholding was made.

(e) Tax Identification Numbers and Tax Information. The Litigation Trustee is authorized to request and obtain from the Litigation Trust Beneficiaries or any other person or entity Forms W-8 and/or W-9 or such other forms or information relating to the Litigation Trustee's tax obligations or obligations to withhold as the Litigation Trustee may reasonably request, and the Litigation Trustee may condition any distribution to any Beneficiary or other distributee upon receipt of such forms or information.

4.2. Delivery of Distributions

Subject to the provisions of Federal Rule of Bankruptcy Procedure 2002(g), and except as otherwise provided herein, distributions and deliveries to Litigation Trust Beneficiaries or other holders of Claims shall be made at the address of each such of the Litigation Trust

Beneficiaries set forth on the Debtors' books and records unless superseded by (i) the address set forth on proofs of claim filed by any such Beneficiary or (ii) the address provided in connection with a transfer pursuant to Section 14.1 of this Agreement.

ARTICLE V.
TRUST FUNDING

5.1. Trust Funding

The costs and expenses of the Litigation Trust, including, without limitation, the compensation to and reimbursement of expenses of the Litigation Trustee and the fees, costs and expenses of all professionals retained by the Litigation Trustee in connection with the performance of the Litigation Trustee's duties in connection with this Agreement shall be paid from a fund set aside by the Litigation Trustee for such purpose in accordance with the terms of the Plan (the "**Litigation Trust Expense Fund**"). The initial amount of the Litigation Trust Expense Fund shall be equal to $1,000,000 plus the GUC Cash Settlement Adjustment, if any, as set forth in the Plan. Additional funds may be transferred to the Litigation Trust Expense Fund from time to time from net recoveries from the Litigation Trust Causes of Action other than the PlainsCapital Recovery as necessary to pay the reasonable costs and expenses of the Litigation Trust, with the consent of the Oversight Committee. For avoidance of doubt, the GUC Cash Settlement Distribution shall not be utilized to fund the Litigation Trust Expense Fund and shall not be subject to charge for claims against the Litigation Trust, the Litigation Trustee, the Debtors or their estates. Any funds remaining in the Litigation Trust Expense Fund after completion of the Litigation Trustee's activities and full payment of all reasonable costs and expenses of the Litigation Trust including, without limitation, the fees, costs and expenses of the Litigation Trustee and the professionals retained by the Litigation Trustee shall be paid to the Litigation Trust Beneficiaries according to the terms of the Confirmation Order, the Plan and this Agreement.

ARTICLE VI.
PROSECUTION AND RESOLUTION OF DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS AND TRUST CAUSES OF ACTION

6.1. Objections to Claims; Prosecution of Disputed Claims

(a) The Litigation Trustee, on behalf of the Litigation Trust, shall have the exclusive right to object to the allowance of any Claims by no later than the bar date for claims objections set forth in Section VII.D of the Plan and as may be further extended by order of the Bankruptcy Court. The Litigation Trustee shall have the right to object to the allowance of Claims with respect to which the Litigation Trustee disputes classification, liability or allowance in whole or in part. The Litigation Trustee shall have the authority to settle, in its sole discretion and without approval of the Bankruptcy Court, any and all such objections to Claims; *provided*, *however*, that the Litigation Trustee may not settle any objection to a Claim where the remaining claim amount after the settlement exceeds $1,000,000 without approval of the Oversight Committee or the Bankruptcy Court.

6.2. Estimation of Claims

The Litigation Trustee may at any time request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether the Debtors or the Litigation Trustee previously have objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. Subject to the provisions of Section 502(j) of the Bankruptcy Code, in the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, the amount so estimated shall constitute the maximum allowed amount of such Claim. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Litigation Trustee may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

6.3. Payments and Distributions on Disputed Claims

(a) Notwithstanding any provision hereof to the contrary, the Litigation Trustee may, in its reasonable discretion, pay the undisputed portion of a Disputed Claim. Notwithstanding the foregoing, the Litigation Trustee will set aside for each Disputed Claim such portion of Cash as may be necessary to provide required distributions if that Claim were an Allowed Claim, either based upon the amount of the Claim as filed with the Bankruptcy Court or the amount of the Claim as estimated by the Bankruptcy Court.

(b) At such time as a Disputed Claim becomes, in whole or in part an Allowed Claim, the Litigation Trustee shall distribute to the Holder thereof the distributions, if any, to which such Holder is then entitled under the Confirmation Order, the Plan or this Agreement. Such distribution, if any, will be made as soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing such Disputed Claim becomes a Final Order. No interest will be paid on Disputed Claims that later become Allowed or with respect to any distribution in satisfaction thereof.

6.4. Prosecution of Litigation Trust Causes of Action

The Litigation Trustee, on behalf of the Litigation Trust, shall have the exclusive right to assert and prosecute in accordance with the Litigation Trustee's reasonable business judgment the Litigation Trust Causes of Action. The Litigation Trustee shall have the authority to settle and comprise, in its sole discretion and without approval of the Bankruptcy Court, any and all Litigation Trust Causes of Action; *provided*, *however*, that the Litigation Trustee may not settle any Litigation Trust Cause of Action where the initial amount of such Litigation Trust Cause of Action, without consideration of any defenses to the same, exceeds $1,000,000 without the consent of the Oversight Committee or the approval of the Bankruptcy Court.

6.5 Payment of Litigation Trustee's Expenses in Connection with Objections to Claims and Prosecution of Disputed Claims

Notwithstanding any other provision of this Agreement or the establishment of the Litigation Trust Expense Fund, as set forth in section VII.A of the Plan, all reasonable fees and expenses incurred by the Litigation Trustee, on behalf of the Litigation Trust, including professional fees and expenses for counsel to the Litigation Trustee, with respect to objections to Claims and claims reconciliation shall be funded by the Reorganized Debtors within 30 days of submission of an invoice to the Reorganized Debtors via e-mail to Gary Barton, gbarton@alvarezandmarsal.com, Kristin Smith, ksmith@vprop.com, and counsel to the Reorganized Debtors. All such fees and expenses incurred by the Litigation Trustee with respect to objections to Claims and claims reconciliation shall not be paid from the Litigation Trust Expense Fund.

ARTICLE VII.
LIABILITY AND EXCULPATION PROVISIONS

7.1. Exculpation/Indemnification

(a) The Litigation Trustee, the Litigation Trustee Professionals, the Litigation Trustee Non-Professionals, and the Litigation Trustee's affiliates, representatives, employees, directors, officers or principals, or members of the Oversight Committee in their capacities as such (collectively, the "**Covered Persons**") shall be, and hereby are, exculpated by all Persons, including the Litigation Trust Beneficiaries and any other holders of Claims, from any and all claims, causes of action and other assertions of liability arising out of the discharge of the powers and duties conferred upon them by the Plan, this Agreement, or any order of the Bankruptcy Court entered pursuant to, or in furtherance of, the Plan, or by applicable law, except for actions or omissions to act that are determined by a Final Order to have arisen out of fraud, gross negligence, or willful misconduct. No Person shall have, or be permitted to pursue, any claim or cause of action against any of the Covered Persons for making payments in accordance with this Agreement or the Plan, or for implementing any other provision of the Plan. To the fullest extent permitted by applicable law, the Litigation Trust shall: (i) indemnify, defend, and hold harmless the Covered Persons from and against any and all losses, claims, damages, liabilities and expenses, including, without limitation, reasonable attorneys' fees, disbursements and related expenses that the Covered Persons may incur or to which the Covered Persons may become subject in connection with any actions or inactions in their capacity as such, except for actions or inactions involving fraud, willful misconduct, or gross negligence; and (ii) the Covered Persons shall be entitled to obtain advances from the Litigation Trust to cover their reasonable fees and expenses incurred in defending any such actions or inactions. Any action taken, or omitted to be taken, with the express approval of the Bankruptcy Court, will conclusively be deemed not to constitute fraud, gross negligence, or willful misconduct. The foregoing exculpation and indemnity in respect of any Covered Person shall survive the termination of such Covered Person from the capacity for which they are indemnified and shall inure to the benefit of the Covered Persons' heirs and assigns.

(b) No holder of a Claim or other party-in-interest will have standing or otherwise be permitted to pursue any claim or cause of action against the Covered Persons for

making payments in accordance with the Confirmation Order, the Plan or this Agreement, or for implementing the provisions of the Confirmation Order, the Plan, or this Agreement.

7.2. Reliance by Litigation Trustee

Except as otherwise provided herein:

(a) the Litigation Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, installment, opinion, report, notice, request, consent, order, or other paper or document reasonably believed to be genuine and to have been signed or presented by the proper party or parties;

(b) the Litigation Trustee shall not be liable for any action reasonably taken or not taken by him in accordance with the advice of a Litigation Trustee Professional; and

(c) persons or entities dealing with the Litigation Trustee shall look only to the Litigation Trust Expense Fund to satisfy any liability incurred by the Litigation Trustee to such person or entity in carrying out the terms of this Agreement, and the Litigation Trustee shall not have any personal obligation to satisfy any such liability, except to the extent that actions taken or not taken after the Effective Date by the Litigation Trustee are determined by a Final Order to be solely due to the Litigation Trustee's own gross negligence, willful misconduct, fraud or breach of fiduciary duty.

ARTICLE VIII.
ESTABLISHMENT OF THE LITIGATION TRUST

8.1. Transfer of Assets to Litigation Trust; Assumption of Liabilities

Pursuant to the Plan, the Debtors and the Litigation Trustee hereby establish the Litigation Trust on behalf of the Litigation Trust Beneficiaries, to be treated as the grantors and deemed owners of the Litigation Trust Assets. The Debtors hereby transfer, assign, and deliver to the Litigation Trust, on behalf of the Litigation Trust Beneficiaries, all of their right, title, and interest in the Litigation Trust Assets, including the Litigation Trust Causes of Action, free and clear of any liens, claims or encumbrances, notwithstanding any prohibition of assignability under applicable non-bankruptcy law. Such transfer includes, but is not limited to, all rights to assert or otherwise exercise any attorney-client privilege, work product protection or other privilege, immunity, or confidentiality provision vested in, or controlled by, the Debtors or their estates in respect of the Litigation Trust Assets. The Litigation Trustee agrees to accept and hold the Litigation Trust Assets in the Litigation Trust for the benefit of the Litigation Trust Beneficiaries, subject to the terms of the Confirmation Order, the Plan, and this Agreement.

8.2. Title to Assets

(a) Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, all Litigation Trust Assets shall vest in the Litigation Trust in accordance with Section 1141 of the Bankruptcy Code. Upon the transfer of the Litigation Trust Assets to the Litigation Trust, the Debtors shall have no interest in or with respect to such Litigation Trust Assets

or the Litigation Trust. The Litigation Trustee shall have no authority to bind the Debtors or Reorganized Debtors in any manner except with respect to the Litigation Trust Assets.

(b) For all federal income tax purposes, all Parties and Litigation Trust Beneficiaries shall treat the transfer of the Litigation Trust Assets by the Debtors to the Litigation Trust, as set forth in this Article VIII and in the Plan, as a transfer of such assets by the Debtors to the Litigation Trust Beneficiaries entitled to distributions under this Agreement followed by a transfer by such Litigation Trust Beneficiaries to the Litigation Trust. Thus, the Litigation Trust Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes as set forth hereinabove in the recitals.

ARTICLE IX.
LITIGATION TRUST BENEFICIARIES

9.1. Identification of Litigation Trust Beneficiaries

In order to determine the actual names and addresses of the Litigation Trust Beneficiaries, the Litigation Trustee shall be entitled, but not required, to conclusively rely on the names and addresses set forth in the Debtors' Schedules, books and records or filed proofs of claim. Each Litigation Trust Beneficiary's right to distribution from the Litigation Trust shall be that accorded to such Litigation Trust Beneficiary under the Plan.

ARTICLE X.
ADMINISTRATION

10.1. Purpose of the Litigation Trust

The Litigation Trust shall be established for the primary purpose of liquidating its assets, in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Litigation Trust. Accordingly, the Litigation Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Litigation Trust Assets, make timely distributions to the Litigation Trust Beneficiaries on account of their Litigation Trust Interests and not unduly prolong its duration, and shall take or refrain from taking such other actions as may be necessary, in the Litigation Trustee's reasonable judgment, to preserve and maintain the status of the Litigation Trust as a "liquidating trust" and as a "grantor trust" within the meaning of Treasury Regulation sections 301.7701-4(d) and 1.671-4(a). The Litigation Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth in this Agreement. The Litigation Trust also shall not be deemed a successor-in-interest of the Litigation Trust Beneficiaries for any purpose other than as specifically set forth in this Agreement or the Plan.

10.2. Books and Records

The Litigation Trustee shall maintain books and records relating to the administration of the Litigation Trust Causes of Action and the distribution by the Litigation Trustee of the proceeds therefrom in such detail and for such period of time as may be necessary to make full and proper accounting in respect thereof and to comply with applicable provisions of

law. The Litigation Trustee shall also maintain books and records relating to the administration of the Litigation Trust Assets (including the Trust Causes of Action), the income and expenses of the Litigation Trust, and the payment of expenses and liabilities of, claims against or assumed by, the Litigation Trust in such detail and for such period of time as may be necessary to make full and proper accounting in respect thereof and to comply with applicable provisions of law. Except as otherwise provided herein or in the Plan, nothing in this Agreement requires the Litigation Trustee to file any accounting or seek approval of any court with respect to the administration of the Litigation Trust, or as a condition for making any payment or distribution out of the Litigation Trust Assets. The Litigation Trustee shall provide such additional statements, reports, submissions, and information to the Oversight Committee as may reasonably be requested, including without limitation, periodic updates on the status of the Litigation Trust, its assets, and the projected timing of future distributions (to the extent known by the Litigation Trustee).

10.3. Compliance with Laws

Any and all distributions of Litigation Trust Assets shall comply with all applicable laws and regulations, including, but not limited to, applicable federal and state tax and securities laws.

ARTICLE XI.
SUCCESSOR LITIGATION TRUSTEE

11.1. Successor Litigation Trustee

In the event the Litigation Trustee is removed by the Bankruptcy Court or the Oversight Committee, resigns pursuant to this Agreement, or otherwise vacates its position, a successor Litigation Trustee shall be appointed by the Oversight Committee without need for approval of the Bankruptcy Court. If a successor Litigation Trustee is not so appointed, the Bankruptcy Court shall appoint a successor in accordance with the best interests of the Litigation Trust Beneficiaries. Any successor Litigation Trustee appointed hereunder shall execute an instrument accepting such appointment. Thereupon, such successor Litigation Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts and duties of its predecessor in the Litigation Trust with like effect as if originally named herein; *provided*, *however*, that a removed or resigning Litigation Trustee shall, nevertheless, when requested in writing by the successor Litigation Trustee, execute and deliver any reasonable instrument or instruments conveying and transferring to such successor Litigation Trustee all the estates, properties, rights, powers, and trusts of such removed or resigning Litigation Trustee.

ARTICLE XII.
DISPUTED CLAIMS RESERVES

12.1. Disputed Claims Reserves

The Litigation Trustee shall maintain the Disputed Claims Reserve as set forth in the Plan and shall distribute such amounts (net of any expenses, including any taxes relating thereto), as provided in the Plan and the Confirmation Order, as such Disputed Claims are resolved, and such amounts shall be distributable in respect of such Disputed Claim as such amounts would have been distributable had the Disputed Claim been Allowed Claim as of the Effective Date.

ARTICLE XIII.
REPORTING

13.1. Required Plan Reporting

The Litigation Trustee shall comply with any reporting requirements set forth in the Confirmation Order and/or the Plan.

13.2. Federal Income Tax

(a) Grantor Trust Status. Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Litigation Trustee), the Litigation Trustee shall file tax returns for the Litigation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a).

(b) Treatment of Litigation Trust Beneficiaries as Grantors. Subject to the provisions of Section 13.2(a) hereof, (i) for federal income tax purposes, the Litigation Trust Beneficiaries shall be treated as grantors and owners of the Litigation Trust for each tax return filed by the Litigation Trustee as a grantor trust; and (ii) each of the Litigation Trust Beneficiaries shall be responsible for payment of any federal income tax with respect to its share of the taxable income of the Litigation Trust for any taxable year determined pursuant to Section 13.2(c), whether or not a reserve is established for disputed claims.

(c) Allocations of Litigation Trust Taxable Income. Subject to the provisions of Section 13.2(a) hereof, allocations of Litigation Trust taxable income shall be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed (without regard to any restriction on distributions described herein) if, immediately prior to such deemed distribution, the Litigation Trust had distributed all of its other assets (valued for this purpose at their tax book value) to the Litigation Trust Beneficiaries (treating any holder of a Disputed Claim, for this purpose, as a current Litigation Trust Beneficiary entitled to distributions), taking into account all prior and concurrent distributions from the Litigation Trust (including any distributions held in the Disputed Claims Reserve pending the resolution of Disputed Claims). Similarly, taxable losses of the Litigation Trust will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining Litigation Trust Assets. The tax book value of the Litigation Trust Assets for this purpose shall equal their fair market value on the Effective Date or, if later, the date such assets were acquired by the Litigation Trust, adjusted in either case in accordance with tax accounting principles prescribed by the IRC, the Treasury Regulations and any other applicable administrative and judicial authorities and pronouncements.

(d) Tax Reporting Duties of Litigation Trustee. In compliance with the IRC and the regulations thereunder, the Litigation Trustee shall prepare and distribute a statement setting forth the information necessary for each of the Litigation Trust Beneficiaries to determine each of its share of items of income, gain, loss, deduction or credit for United States federal income tax purposes.

13.3. Other

The Litigation Trustee shall file (or cause to be filed) any other statement, returns or disclosures relating to the Litigation Trust or the Litigation Trust Assets, that are required by the Internal Revenue Service or any other governmental unit.

ARTICLE XIV.
TRANSFER OF LITIGATION TRUST BENEFICIARIES' INTERESTS

14.1. Transfer of Litigation Trust Beneficiaries' Interests

The Litigation Trust Interests that are owned by the Litigation Trust Beneficiaries shall not be certificated. The Litigation Trustee may make distributions and send communications to Litigation Trust Beneficiaries based on its books and records identifying holders of Claims as of the Distribution Record Date as set forth in the Plan, and in so doing the Litigation Trustee shall be fully protected and incur no liability to any purported transferee or any other person or entity.

ARTICLE XV.
LITIGATION TRUSTEE PROFESSIONALS AND NON-PROFESSIONALS

15.1. Retention of Litigation Trustee Professionals and Non-Professionals

(a) In consultation with the Oversight Committee, the Litigation Trustee shall have the right to retain its own professionals including, without limitation, claims, disbursing and transfer agents, legal counsel, accountants, experts and other agents or advisors, as the Litigation Trustee deems appropriate (the "**Litigation Trustee Professionals**") and on such terms as the Litigation Trustee deems appropriate. The Litigation Trustee Professionals shall be compensated in accordance with Section 15.2 hereof. The Litigation Trustee Professionals so retained need not be "disinterested" as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors to the Debtors or the Committee.

(b) The Litigation Trustee shall have the right to retain non-professionals including, without limitation, employees, independent contractors or other agents as the Litigation Trustee deems appropriate (the "**Litigation Trustee Non-Professionals**") and on such terms as the Litigation Trustee deems appropriate. Such Litigation Trustee Non-Professionals shall be compensated in accordance with Section 15.2 hereof. The Litigation Trustee Non-Professionals so retained need not be "disinterested" as that term is defined in the Bankruptcy Code and may include, without limitation, employees, independent contractors or agents to the Debtors or the Committee.

15.2. Payment to Litigation Trustee Professionals and Litigation Trustee Non-Professionals

(a) After the Effective Date, Litigation Trustee Professionals shall be required to submit reasonably detailed invoices on a monthly basis to the Litigation Trustee and the Oversight Committee, including in such invoices a description of the work performed, who performed such work, and if billing on an hourly basis, the hourly rate of each such person, plus

an itemized statement of expenses. The Litigation Trustee and the Oversight Committee shall have ten (10) days after receipt of any such invoice to advise the Litigation Trustee Professional in writing of any objections to the invoice. If no objection to the invoice is made within that time period, then the Litigation Trustee shall pay that invoice, without Bankruptcy Court approval. If there is a dispute as to a part of an invoice, the Litigation Trustee shall pay the undisputed portion and the Bankruptcy Court shall resolve any disputed amount; *provided, however*, that the parties shall first attempt to resolve the dispute before submitting the dispute to the Bankruptcy Court for resolution.

(b) After the Effective Date, Litigation Trustee Non-Professionals shall be required to submit to the Litigation Trustee and the Oversight Committee periodic invoices containing information with sufficient detail to assess the reasonableness of the fees and charges. The Litigation Trustee and the Oversight Committee shall have ten (10) days after receipt of any such invoice to advise the Litigation Trustee Non-Professional in writing of any objections to the invoice. If no objection to the invoice is made within that time period, then the Litigation Trustee shall pay that invoice, without Bankruptcy Court approval. If there is a dispute as to a part of an invoice, the Litigation Trustee shall pay the undisputed portion and the Bankruptcy Court shall resolve any disputed amount; *provided, however*, that the parties shall first attempt to resolve the dispute before submitting the dispute to the Bankruptcy Court for resolution.

(c) All payments to Litigation Trustee Professionals or Litigation Trustee Non-Professionals shall be paid out of the Litigation Trust Expense Fund.

ARTICLE XVI.
TERMINATION OF LITIGATION TRUST

16.1. Duration and Extension

Notwithstanding any provision of the Plan to the contrary, the Litigation Trust will terminate as soon as practicable, but in no event later than the fifth (5th) anniversary of the Effective Date; *provided, however*, that, the Bankruptcy Court, upon motion by a party-in-interest within the six (6) month period prior to the fifth (5th) anniversary (or within the six (6) months prior to the end of an extension period), may extend the term of the Litigation Trust for a finite period (not to exceed an additional three (3) years, together with any prior extensions, without a favorable ruling from the IRS that any further extension would not adversely affect the status of the Litigation Trust as a grantor trust for federal income tax purposes) if such an extension is warranted by the facts and based upon a finding that such an extension is necessary to the liquidating purpose of the Litigation Trust, *provided further*, adequate funding exists for such extension period as determined by the Bankruptcy Court.

16.2. Diligent Administration

The Litigation Trustee shall, as applicable, (i) not unduly prolong the duration of the Litigation Trust; (ii) at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute Litigation Trust Assets; (iii) effect the liquidation and distribution of the Litigation Trust Assets to the Litigation Trust Beneficiaries in accordance with the terms hereof, and (iv) endeavor to terminate the Litigation Trust as soon as reasonably practicable.

ARTICLE XVII.
AMENDMENT AND WAIVER

17.1. Amendment and Waiver.

Any substantive provision of this Agreement may be materially amended or waived only with the written consent of the Litigation Trustee and the Oversight Committee or by order of the Bankruptcy Court if necessary to implement the Plan; *provided*, *however*, that no change may be made to this Agreement that would adversely affect the federal income tax status of the Litigation Trust as a "grantor trust." Technical or non-material amendments to or waivers of portions of this Agreement may be made as necessary, to clarify this Agreement or to enable the Litigation Trust to effectuate the terms of this Agreement, with the consent of the Litigation Trustee.

ARTICLE XVIII.
MISCELLANEOUS PROVISIONS

18.1. Intention of Parties to Establish Grantor Trust

This Agreement is intended to create a grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as a grantor trust.

18.2. Preservation of Privilege

Pursuant to Article IV.P of the Plan, in connection with the vesting and transfer of Litigation Trust Causes of Action, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written, electronic or oral) to the extent related to the Litigation Trust Causes of Action shall be shared by the Litigation Trust and the Reorganized Debtors and shall vest in the Litigation Trustee and attorneys, agents, and representatives to the extent necessary to effect such shared privilege. The Debtors or the Reorganized Debtors, as the case may be, and the Litigation Trustee are authorized to take all necessary actions to effectuate the sharing and vesting of such privileges, protections and immunities. In connection with the prosecution and/or investigation of the Litigation Trust Causes of Action by the Litigation Trustee, any and all directors, officers, employees, counsel, agents, or attorneys-in-fact, of the Debtors or Reorganized Debtors, cannot assert any shared privilege, or other privilege or immunity attaching or relating to any documents or communications (of any kind, whether written or oral, electronic or otherwise) shared by the Reorganized Debtors and the Litigation Trust to otherwise prevent, hinder, delay, or impede production or discussion of documents or communications requested by the Litigation Trustee in discovery (whether formal or informal, and including without limitation, depositions, written discovery, and interviews). The Debtors and the Litigation Trustee shall take all necessary actions to protect the transfer of such privileges, protections and immunities.

18.3. Standing

The Litigation Trust and the Litigation Trustee shall have standing to object to Claims against the Debtors' estates and to assert and prosecute the Litigation Trust Causes of Action, and shall stand in the shoes of the Debtors with respect thereto.

18.4. Prevailing Party

Subject to Section 7.1 hereof, if the Litigation Trustee or the Litigation Trust, as the case may be, is the prevailing party in a dispute regarding the provisions of this Agreement or the enforcement thereof, then such prevailing party shall be entitled to collect any and all costs, expenses and fees, including attorneys' fees, from the non-prevailing party incurred in connection with such dispute or enforcement action.

18.5. Confidentiality

The Litigation Trustee, and each of his employees, members, agents, professionals and advisors, including the Litigation Trustee Professionals and Litigation Trustee Non-Professionals, and members of the Oversight Committee (each a "**Confidential Party**" and collectively the "**Confidential Parties**") shall hold strictly confidential and not use for personal gain any material, non-public information of which they have become aware in their capacity as a Confidential Party, of or pertaining to any Entity to which any of the Litigation Trust Assets relates; *provided*, *however*, that such information may be disclosed if (a) it is now or in the future becomes generally available to the public other than as a result of a disclosure by the Confidential Parties, or (b) such disclosure is required of the Confidential Parties pursuant to legal process including but not limited to subpoena or other court order or other applicable laws or regulations. In the event that any Confidential Party is requested to divulge confidential information pursuant to this subparagraph (b), such Confidential Party shall promptly, in advance of making such disclosure, provide reasonable notice of such required disclosure to the Litigation Trustee to allow him sufficient time to object to or prevent such disclosure through judicial or other means and shall cooperate reasonably with the Litigation Trustee in making any such objection, including but not limited to appearing in any judicial or administrative proceeding in support of any objection to such disclosure.

18.6. Laws as to Construction

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to rules governing the conflict of law.

18.7. Severability

If any provision of this Agreement or the application thereof to any person or entity or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

18.8. Oversight Committee

In furtherance of the Plan, on the Effective Date, the Oversight Committee shall be established to oversee the implementation of the Plan. The Oversight Committee shall have access to the Litigation Trustee and the right to consult with and, to the extent provided in this Agreement, direct the Litigation Trustee in connection with the administration and implementation of the Plan on and after the Effective Date as set forth in this Agreement. The Oversight Committee shall initially consist of two members designated by the Committee prior to the Effective Date and one member designated by the Term Loan Lenders (as defined in the Plan) prior to the Effective Date. The Oversight Committee shall adopt by-laws that will govern its activities and govern the voting of all actions of the Oversight Committee hereunder. The Oversight Committee by-laws shall be substantially similar to the by-laws governing the Committee (except with respect to voting procedures where the by-laws shall be the same). Members of the Oversight Committee shall not be compensated for performance of their duties in connection with the Oversight Committee.

18.9. Notices

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered by electronic mail (at the addresses set forth below) and deposited, postage prepaid, in a post office or letter box addressed to the person or entity (or their successors or replacements) for whom such notice is intended at such address as set forth below, or such other addresses as may be filed with the Bankruptcy Court:

Litigation Trustee:

Ankura Trust Company
Attn: James McGinley and Scott Rinaldi
140 Sherman Street, 4th Floor
Fairfield, CT 06824
James.McGinley@ankura.com
Scott.Rinaldi@ankura.com

18.10. Notices if to Litigation Trust Beneficiaries

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the person or entity for whom such notice is intended, or via electronic mail, to the name and address set forth on such Beneficiary's proof of claim or such other notice filed with the Bankruptcy Court, or if none of the above has been filed, to the address set forth in the Debtors' Schedules or books and records or provided to the Litigation Trustee pursuant to Section 14.1.

18.11. Survivability

Notwithstanding any provision of the Plan to the contrary, the terms and provisions of this Agreement shall remain fully binding and enforceable notwithstanding any vacancy in the position of the Litigation Trustee.

18.12. Headings

The section headings contained in this Agreement are solely for the convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof.

18.13. Conflicts with Plan Provisions

Except as otherwise expressly stated herein, if any of the terms and/or provisions of this Agreement conflict with the terms and/or provisions of the Plan, then the Plan shall govern, *provided, however*, that if any inconsistencies or clarifications are in furtherance of the Litigation Trust's qualification as a grantor trust for federal income tax purposes, then the terms and/or provisions of the Litigation Trust shall govern.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have either executed and acknowledged this Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

LITIGATION TRUSTEE

By: _____

VISTA PROPPANTS AND LOGISTICS, LLC

By: _____

VPROP OPERATING, LLC

By: _____

LONESTAR PROSPECTS MANAGEMENT, L.L.C.

By: _____

MAALT SPECIALIZED BULK, LLC

By: _____

LONESTAR PROSPECTS, LTD.

By: _____

DENETZ LOGISTICS, LLC

By: _____

MAALT, LP

By: _____

Exhibit A

Engagement Letter

Exhibit 9

Litigation Trust Loan Documents

UNSECURED PROMISSORY NOTE

U.S. $250,000 Dated: October [●], 2020

FOR VALUE RECEIVED, the undersigned, Vista Litigation Trust (the "Payor"), a liquidating trust established in accordance with the *Third Amended Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code*, dated September 14, 2020 (including all exhibits and supplements thereto, as the same may be further amended, modified, or supplemented from time to time, the "Plan"), hereby unconditionally promises to pay to the order of VPROP Operating, LLC, a Delaware limited liability company (the "Payee"), the principal sum of TWO HUNDRED AND FIFTY THOUSAND AND NO/100 DOLLARS ($250,000.00) in lawful money of the United States of America, such amount representing the original aggregate principal amount of the loan evidenced hereby (the "Loan") owed by the Payor to the Payee pursuant to this Unsecured Promissory Note (as the same may be amended, restated, supplemented or otherwise modified from time to time, this "Note"). Capitalized terms used herein and not otherwise defined herein or when first used shall have the meanings set forth in the Plan.

This Note is being made by Payor pursuant to the Plan.

Section 1. Repayment; Interest; Prepayment.

(a) Within [__] days following Payor's receipt of any net cash proceeds from Litigation Trust Causes of Action (other than from the PlainsCapital Recovery), Payor shall repay the principal amount of this Note, together with accrued interest thereon, in an amount equal to such net cash proceeds until the principal balance hereof is paid in full.

(b) The Payor promises to pay interest on the unpaid principal amount of the Loan from the date hereof until such principal amount is paid in full. Upon any repayment of principal of the Loan, accrued interest on the principal amount repaid shall be payable on the date of such repayment. Interest shall be computed on the basis of a 365-day year for the actual number of days elapsed at a per annum rate equal to [__] percent [(__%)].[1]

(c) The indebtedness evidenced hereby may be prepaid in whole or in part at any time and from time to time without premium or penalty, together with accrued interest thereon through the date of prepayment.

(d) All payments of principal and interest in respect of the Loan shall be made payable to the Payee in lawful money of the United States of America for the Payee's account at such place as shall be designated by the Payee for such purpose.

(e) THE PAYOR WAIVES ANY AND ALL REQUIREMENTS OF DEMAND, PRESENTMENT, PROTEST, NOTICE OF DISHONOR OR FURTHER NOTICE OF ANY

[1] NTD: Insert short term Applicable Federal Rate (AFR) as of the date the Loan is made.

KIND IN CONNECTION WITH THIS NOTE. All payments made by, or on behalf of, the Payor hereunder will be made without setoff, counterclaim or other defense.

(f) Should any payment of principal or interest become due and payable on any day other than a Business Day ("Business Day" being any day not a Saturday, Sunday or legal holiday in Dallas, Texas), the maturity thereof shall be extended to the next succeeding Business Day and interest shall continue to accrue at the applicable rate until such payment is made.

(g) The Payee is hereby authorized to record all loans and advances made by it to the Payor (all of which shall be evidenced by this Note), and all repayments or prepayments thereof, in its books and records, such books and records constituting prima facie evidence of the accuracy of the information contained therein.

Section 2. Covenant. From time to time, the Payor agrees that the Payor will cooperate with the Payee and will execute and deliver, or cause to be executed and delivered, all such further instruments and documents, and will take all such further actions, as the Payee may reasonably request in order to carry out the provisions and purposes of this Note.

Section 3. GOVERNING LAW. **THIS NOTE IS BEING EXECUTED AND DELIVERED AND IS INTENDED TO BE PERFORMED IN THE STATE OF TEXAS. THIS NOTE AND ALL ISSUES AND CLAIMS ARISING IN CONNECTION WITH OR RELATING TO THIS NOTE, INCLUDING BUT WITHOUT LIMITATION, ALL CONTRACT, TORT, EQUITY, OR OTHER CLAIMS OR COUNTERCLAIMS SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (WITHOUT CONSIDERATION OF ITS CONFLICTS OF LAWS RULES) AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.**

Section 4. Consent to Jurisdiction; Service of Process. Any legal action or proceeding with respect to this Note shall be brought in the Bankruptcy Court and, by execution and delivery of this Note, the Payor hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid court. The Payor further irrevocably consents to the service of process out of the Bankruptcy Court in any action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Payor at its address designated below, such service to become effective seven days after such mailing. Nothing herein shall affect the right of the Payee or any holder of this Note to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Payor in any other jurisdiction. The Payor hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Note brought in the Bankruptcy Court and hereby further irrevocably waives and agrees not to plead or claim in such court that any such action or proceeding brought in such court has been brought in an inconvenient forum.

Section 5. Successors and Assigns. Whenever in this Note reference is made to the Payee or the Payor, such reference shall be deemed to include, as applicable, a reference to their respective successors and assigns. The Payee may freely assign all or any portion of its rights, obligations or agreements under this Note without the Payor's consent. The Payor may not assign any portion of its rights, obligations or agreements under this Note without the Payee's prior

written consent. The provisions of this Note shall be binding upon and shall inure to the benefit of said successors and assigns.

Section 6. Severability. If any term of this Note shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Note shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein.

Section 7. Headings. Section headings in this Note are for convenience of reference only, and shall not govern the interpretation of any of the provisions of this Note.

Section 8. Notices. Any notice, communication, request, reply or advice or other notice pertaining to this Note to be given, made or accepted by either party to the other shall be made (a) if to the Payor, addressed to the Litigation Trustee in accordance with Section 18.9 of the Litigation Trust Agreement and (b) if to the Payee, in writing and delivered by hand or overnight courier service or mailed by certified or registered mail at its address below or as otherwise permitted by the Plan or the Litigation Trust Agreement.

If to the Payee: VPROP Operating, LLC
4413 Carey Street
Fort Worth, TX 76119
Attention: [General Counsel]

With a copy to:

Haynes and Boone, LLP
2323 Victory Avenue
Suite 700
Dallas, Texas 75129
Attention: Sakina Foster

Section 9. Amendments. This Note may be amended only by a written instrument duly executed by each of the Payee and the Payor.

Section 10. Counterparts. This Note may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

Section 11. No Conflict. Except as otherwise expressly stated herein, if any of the terms and/or provisions of this Note conflict with the terms and/or provisions of the Plan, then the Plan shall govern.

[REMAINDER OF THIS PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Note has been executed and delivered as of the date first written above.

Payor:

VISTA LITIGATION TRUST

By: Its Litigation Trustee

_____

Name:

Acknowledged and Accepted:

Payee:

VPROP OPERATING, LLC

By: _____

Name: Kristin W. Smith
Title: Chief Financial Officer

Exhibit 10

Identity of Litigation Trustee

Litigation Trustee Selected by the Committee: **Ankura Trust Company.**

Members of the Oversight Committee Selected by the Committee: **Trinity Industries Leasing Co. and Twin Eagle Sand Logistics, LLC.**