

**FIRST AMENDMENT TO SECOND AMENDED AND RESTATED  
SENIOR SECURED REVOLVING CREDIT AGREEMENT**

**THIS FIRST AMENDMENT TO SECOND AMENDED AND RESTATED SENIOR SECURED REVOLVING CREDIT AGREEMENT** (this “*Amendment*”), is made and entered into as of August 28, 2014, by and among KAYNE ANDERSON ENERGY DEVELOPMENT COMPANY, a Maryland corporation (the “*Borrower*”), the several banks and other financial institutions from time to time party hereto (collectively, the “*Lenders*”) and SUNTRUST BANK, in its capacity as Administrative Agent for the Lenders (the “*Administrative Agent*”).

**WITNESSETH:**

WHEREAS, the Borrower, the Lenders and the Administrative Agent are parties to that certain Second Amended and Restated Senior Secured Revolving Credit Agreement, dated as of January 28, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the “*Credit Agreement*”; capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement), pursuant to which the Lenders have made certain financial accommodations available to the Borrower;

WHEREAS, the Borrower has requested that the Lenders and the Administrative Agent (i) extend the Revolving Commitment Termination Date, (ii) add a term loan facility and (iii) amend certain other provisions of the Credit Agreement, and subject to the terms and conditions hereof, the Lenders are willing to do so;

NOW, THEREFORE, for good and valuable consideration, the sufficiency and receipt of all of which are acknowledged, the Borrower, the Lenders and the Administrative Agent agree as follows:

1. **Amendments.**

(a) From and after the First Amendment Effective Date (as defined below), the Credit Agreement is amended in its entirety to read in the form of such Credit Agreement attached hereto as Exhibit A to this Amendment.

(b) (i) Schedule I to Credit Agreement is hereby deleted in its entirety and replaced with the Schedule I attached hereto and made a part hereof; (ii) Exhibit 5.1(c) to the Credit Agreement is hereby deleted in its entirety and replaced with the Exhibit 5.1(c) attached hereto and made a part hereof; (iii) Exhibit 5.1(e) to the Credit Agreement is hereby deleted in its entirety and replaced with the Exhibit 5.1(e) attached hereto and made a part hereof and (iv) a new Exhibit 7.1(g) is hereby added to the Credit Agreement in the form of Exhibit 7.1(g) attached hereto and made a part hereof. All other Schedules and Exhibits to the Credit Agreement shall not be modified or otherwise affected.

2. **Conditions to Effectiveness of this Amendment.** Notwithstanding any other provision of this Amendment and without affecting in any manner the rights of the Lenders hereunder, it is understood and agreed that this Amendment shall not become effective, and the

Borrower shall have no rights under this Amendment, until the date on which (the “First Amendment Effective Date”) Arranger or the Administrative Agent, as applicable, shall have received: (i) an amendment fee in the amount of 0.10% of the Revolving Commitments, to be applied pro rata in respect of such Revolving Commitments among the Lenders that have Revolving Commitments, (ii) such other fees as the Borrower has agreed to pay the Arranger, the Administrative Agent or any of their respective affiliates in connection with this Amendment, (iii) reimbursement or payment of its reasonable out-of-pocket costs and expenses incurred in connection with this Amendment or the Credit Agreement (including reasonable fees, charges and disbursements of King & Spalding LLP, counsel to the Administrative Agent), and (iv) each of the following documents:

(a) executed counterparts to this Amendment from the Borrower and each of the Lenders;

(b) a certificate of a Responsible Officer of the Borrower, (1) certifying that the articles of incorporation and bylaws of the Borrower that were delivered on the Closing Date remain true and complete as of the First Amendment Effective Date, (2) attaching and certifying copies of resolutions of its board of directors or other equivalent governing body authorizing the execution, delivery and performance of this Amendment and the transactions contemplated hereby and (4) certifying as to the incumbency of the duly elected and qualified officer(s) of the Borrower as of the First Amendment Effective Date;

(c) a favorable written opinion of Paul Hastings LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each of the Lenders, and covering such matters relating to the Loan Parties, the Amendment and the transactions contemplated herein as the Administrative Agent or the Required Lenders shall reasonably request;

(d) a certificate in the form of Exhibit 3.1(c)(viii) to the Credit Agreement, dated as of the First Amendment Effective Date and signed by a Responsible Officer, certifying that (x) no Default or Event of Default exists, (y) all representations and warranties of each Loan Party set forth in the Loan Documents are true and correct and (z) since the date of the financial statements of the Borrower described in Section 4.4 of the Credit Agreement, there shall have been no change which has had or could reasonably be expected to have a Material Adverse Effect;

(e) all governmental and third-party consents and approvals to this Amendment (all of which shall be final, with no waiting period to expire or ongoing governmental inquiry or investigation);

(f) satisfaction of each of the conditions set forth in Section 3.2 of the Credit Agreement; and

(g) a duly executed Federal Reserve Form U-1, executed by the Borrower and the Administrative Agent on behalf of each Lender.

3. **Representations and Warranties.** To induce the Lenders and the Administrative Agent to enter into this Amendment, each Loan Party hereby represents and warrants to the Lenders and the Administrative Agent:

(a) The Borrower and each of its Subsidiaries (i) is duly organized, validly existing and in good standing as a corporation, partnership or limited liability company under the laws of the jurisdiction of its organization, (ii) has all requisite power and authority to carry on its business as now conducted, and (iii) is duly qualified to do business, and is in good standing, in each jurisdiction where such qualification is required, except where a failure to be so qualified would not reasonably be expected to result in a Material Adverse Effect;

(b) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party are within such Loan Party's organizational powers and have been duly authorized by all necessary organizational, and if required, shareholder, partner or member, action;

(c) The execution, delivery and performance by the Borrower of this Amendment, and by each Loan Party of the other Loan Documents to which it is a party (i) do not require any consent or approval of, registration or filing with, or any action by, any Governmental Authority, except those as have been obtained or made and are in full force and effect, (ii) will not violate any Requirements of Law applicable to Borrower or any of its Subsidiaries or any judgment, order or ruling of any Governmental Authority, (iii) will not violate or result in a default under any indenture, material agreement or other material instrument binding on the Parent or any of its Subsidiaries or any of its assets or give rise to a right thereunder to require any payment to be made by the Borrower or any of its Subsidiaries and (iv) will not result in the creation or imposition of any Lien on any asset of the Parent or any of its Subsidiaries, except Liens (if any) created under the Loan Documents;

(d) This Amendment has been duly executed and delivered for the benefit of or on behalf of each Loan Party and constitutes a legal, valid and binding obligation of each Loan Party, enforceable against such Loan Party in accordance with its terms except as the enforceability hereof may be limited by bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights and remedies in general; and

(e) After giving effect to this Amendment, the representations and warranties contained in the Credit Agreement and the other Loan Documents are true and correct in all material respects, and no Default or Event of Default has occurred and is continuing as of the date hereof.

4. **Acknowledgments.** Each Loan Party hereby acknowledges that, as of the date hereof, the security interests and liens granted to the Administrative Agent and the Lenders under the Credit Agreement and the other Loan Documents are in full force and effect, are properly perfected and are enforceable in accordance with the terms of the Credit Agreement and the other Loan Documents.

5. **Effect of Amendment.** Except as set forth expressly herein, all terms of the Credit Agreement, as amended hereby, and the other Loan Documents shall be and remain in full

force and effect and shall constitute the legal, valid, binding and enforceable obligations of the Borrower to the Lenders and the Administrative Agent. The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of the Lenders under the Credit Agreement, nor constitute a waiver of any provision of the Credit Agreement. This Amendment shall constitute a Loan Document for all purposes of the Credit Agreement.

6. **Governing Law.** This Amendment shall be governed by, and construed in accordance with, the internal law of the State of New York and all applicable federal laws of the United States of America.

7. **No Novation.** This Amendment is not intended by the parties to be, and shall not be construed to be, a novation of the Credit Agreement or an accord and satisfaction in regard thereto.

8. **Costs and Expenses.** The Borrower agrees to pay on demand all costs and expenses of the Administrative Agent in connection with the preparation, execution and delivery of this Amendment, including, without limitation, the reasonable fees and out-of-pocket expenses of outside counsel for the Administrative Agent with respect thereto.

9. **Counterparts.** This Amendment may be executed by one or more of the parties hereto in any number of separate counterparts, each of which shall be deemed an original and all of which, taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by facsimile transmission or by electronic mail in pdf form shall be as effective as delivery of an original executed counterpart hereof.

10. **Binding Nature.** This Amendment shall be binding upon and inure to the benefit of the parties hereto, their respective successors, successors-in-titles, and assigns.

11. **Entire Understanding.** This Amendment sets forth the entire understanding of the parties with respect to the matters set forth herein, and shall supersede any prior negotiations or agreements, whether written or oral, with respect thereto.

*[Signature Pages To Follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed, under seal in the case of the Borrower by an authorized officer as of the day and year first above written.

KAYNE ANDERSON ENERGY  
DEVELOPMENT COMPANY, a Maryland  
corporation, as the Borrower



SUNTRUST BANK,  
as Administrative Agent and as a Lender



CITIBANK, N.A., as a Lender



UBS AG, STAMFORD BRANCH,  
as a Lender



**[SIGNATURE PAGE TO FIRST AMENDMENT]**



THE BANK OF NOVA SCOTIA,  
as a Lender

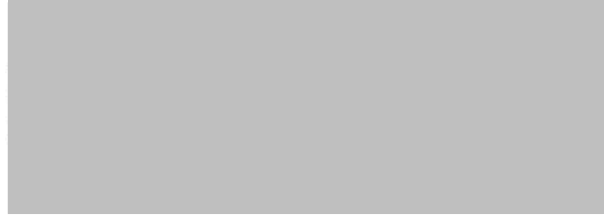
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**BANK OF AMERICA, N.A., as a Lender**



WELLS FARGO BANK, N.A., as a Lender



JPMORGAN CHASE BANK, N.A.,  
as a Lender



ROYAL BANK OF CANADA, as a Lender



[SIGNATURE PAGE TO FIRST AMENDMENT]

STIFEL BANK & TRUST, as a Lender



**EXHIBIT A**  
**CONFORMED CREDIT AGREEMENT**

**EXHIBIT A**

**SECOND AMENDED AND RESTATED SENIOR SECURED REVOLVING CREDIT  
AGREEMENT**

**dated as of January 28, 2014**

**among**

**KAYNE ANDERSON ENERGY DEVELOPMENT COMPANY  
as Borrower**

**THE LENDERS FROM TIME TO TIME PARTY HERETO**

**and**

**SUNTRUST BANK  
as Administrative Agent**

**CITIBANK, N.A.  
as Syndication Agent**

**and**

**UBS SECURITIES LLC  
and  
THE BANK OF NOVA SCOTIA  
as Co-Documentation Agents**

**As conformed through the First Amendment, dated August 28, 2014**

=====

**SUNTRUST ROBINSON HUMPHREY, INC.  
as Arranger and Book Manager**



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**SECOND AMENDED AND RESTATED SENIOR SECURED REVOLVING CREDIT AGREEMENT**

**THIS SECOND AMENDED AND RESTATED SENIOR SECURED REVOLVING CREDIT AGREEMENT** (this “*Agreement*”) is made and entered into as of January 28, 2014, by and among KAYNE ANDERSON ENERGY DEVELOPMENT COMPANY, a Maryland corporation (the “*Borrower*”), the several banks and other financial institutions from time to time party hereto (the “*Lenders*”), SUNTRUST BANK, in its capacity as Administrative Agent for the Lenders (the “*Administrative Agent*”), CITIBANK, N.A., as Syndication Agent (“*Syndication Agent*”) and UBS SECURITIES LLC and THE BANK OF NOVA SCOTIA, as Co-Documentation Agents (“*Co-Documentation Agents*”).

**WITNESSETH:**

**WHEREAS**, the Borrower, SunTrust Bank, as Administrative Agent, and the financial institutions and other entities that are lenders thereunder are parties to that certain Amended and Restated Senior Secured Revolving Credit Agreement, dated as of March 30, 2010 (as amended by that certain First Amendment dated November 14, 2011, as further amended by that certain Joinder Agreement, Amendment and Waiver, dated as of March 11, 2013, the “*Existing Credit Agreement*”) which established a \$95,000,000 senior secured revolving credit facility with a \$5,000,000 swing line facility in favor of the Borrower;

**WHEREAS**, the Borrower has requested certain amendments to the Existing Credit Agreement, and subject to the terms and conditions contained in this Agreement, the parties hereto have agreed to amend, restate and replace the Existing Credit Agreement in order to refinance the loans made under the Existing Credit Agreement;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree that the Existing Credit Agreement is amended and restated in its entirety as follows:

**ARTICLE I**

**DEFINITIONS; CONSTRUCTION**

**Section 1.1. Definitions.** In addition to the other terms defined herein, the following terms used herein shall have the meanings herein specified (to be equally applicable to both the singular and plural forms of the terms defined):

“*Additional Commitment Amount*” shall have the meaning given to such term in Section 2.20.

“*Additional Lender*” shall have the meaning given to such term in Section 2.20.

“*Adjusted Borrowing Base*” shall mean the Borrowing Base minus the aggregate amount of Cash and Cash Equivalents included in the Collateral.

“*Adjusted Exposure Amount*” shall mean, on any date, (a) the aggregate principal amount of (i) all of the Revolving Credit Exposures plus (ii) the outstanding Term Loans plus (iii) the

outstanding Other Senior Secured Indebtedness minus (b) the aggregate amount of Cash and Cash Equivalents included in the Borrowing Base.

“**Adjusted LIBO Rate**” shall mean, with respect to each Interest Period for a Eurodollar Borrowing, (i) the rate per annum equal to the London interbank offered rate for deposits in U.S. Dollars appearing on Reuters screen page LIBOR 01 (or on any successor or substitute page of such service or any successor to such service, or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 A.M. (London time) two (2) Business Days prior to the first day of such Interest Period, with a maturity comparable to such Interest Period; provided that if such rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement, divided by (ii) a percentage equal to 100% minus the then stated maximum rate of all reserve requirements (including any marginal, emergency, supplemental, special or other reserves and without benefit of credits for proration, exceptions or offsets that may be available from time to time) applicable to any member bank of the Federal Reserve System in respect of Eurocurrency liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D); provided, that if the rate referred to in clause (i) above is not available at any such time for any reason, then the rate referred to in clause (i) shall instead be the interest rate per annum, as determined by the Administrative Agent, to be the arithmetic average of the rates per annum at which deposits in U.S. Dollars in an amount equal to the amount of such Eurodollar Loan are offered by major banks in the London interbank market to the Administrative Agent at approximately 11:00 A.M. (London time), two (2) Business Days prior to the first day of such Interest Period; provided that if such rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“**Administrative Agent**” shall have the meaning assigned to such term in the opening paragraph hereof.

“**Administrative Questionnaire**” shall mean, with respect to each Lender, an administrative questionnaire in the form prepared by the Administrative Agent and submitted to the Administrative Agent duly completed by such Lender.

“**Advance Rate**” means, as to any Portfolio Investment and subject to adjustment as provided in Section 5.12(a), (b) and (c), the following percentages with respect to such Portfolio Investment:

<u>Portfolio Investment</u>	<u>Quoted</u>	<u>Unquoted</u>
Cash, Cash Equivalents and Short-Term U.S. Government Securities	100%	n.a.
Long-Term U.S. Government Securities	95%	n.a.
Performing First Lien Bank Loans	80%	70%
Performing Second Lien Bank Loans	70%	60%
Performing Unsecured Bank Loans	65%	55%
Performing Non-Cash Pay Bank Loans	55%	45%
Performing Cash Pay High Yield Securities	60%	50%

Performing Non-Cash Pay High Yield Securities	50%	40%
Performing Public MLP Common and Preferred Units	50%	45%
Performing Private MLP Common and Preferred Units	n.a.	20%
Performing Common Equity, Warrants and MLP Subordinated Units	45%	40%
Non-Performing First Lien Bank Loans	35%	0%
Non-Performing Second Lien Bank Loans	25%	0%
Non-Performing High Yield Securities	25%	0%
Non-Performing Unsecured Bank Loans	20%	0%
Non-Performing Public MLP Common and Preferred Units	35%	0%

“*Affiliate*” shall mean, as to any Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person. For the purposes of this definition, “Control” shall mean the power, directly or indirectly, either to (i) vote 5% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of a Person or (ii) direct or cause the direction of the management and policies of a Person, whether through the ability to exercise voting power, by control or otherwise. The terms “Controlling”, “Controlled by”, and “under common Control with” have the meanings correlative thereto.

“*Anti-Corruption Laws*” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption.

“*Anti-Terrorism Order*” shall mean Executive Order 13224, signed by President George W. Bush on September 23, 2001.

“*Applicable Lending Office*” shall mean, for each Lender and for each Type of Loan, the “Lending Office” of such Lender (or an Affiliate of such Lender) designated for such Type of Loan in the Administrative Questionnaire submitted by such Lender or such other office of such Lender (or an Affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrower as the office by which its Loans of such Type are to be made and maintained.

“*Applicable Margin*” shall mean, as of any date, (a) with respect to all Revolving Loans outstanding on any date, 0.60% per annum on Base Rate Loans and 1.60% per annum on Eurodollar Loans and (b) with respect to all Term Loans outstanding on any date, 0.35% per annum on Base Rate Loans and 1.35% per annum on Eurodollar Loans; provided, that, if the aggregate principal amount of

outstanding Revolving Loans, Term Loans and Other Senior Secured Indebtedness exceeds the Quoted Securities Borrowing Base, then the Applicable Margin (i) with respect to the Revolving Loans shall mean 2.00% per annum on Base Rate Loans and 3.00% per annum on Eurodollar Loans and (ii) with respect to the Term Loans shall mean 1.00% per annum on Base Rate Loans and 2.00% per annum on Eurodollar Loans.

**“Applicable Percentage”** shall mean, as of any date, with respect to the commitment fee, 0.30% per annum; provided, however, if the aggregate principal amount of outstanding Revolving Loans exceeds the Quoted Securities Borrowing Base, the commitment fee shall be equal to 0.50% per annum.

**“Approved Brokerage Accounts”** shall mean the accounts set forth on Part A of Schedule III, or such other accounts approved by the Administrative Agent, such approval not to be unreasonably withheld.

**“Approved Dealer”** shall mean (a) in the case of any Portfolio Investment that is not a U.S. Government Security, a bank or a broker-dealer registered under the Securities Exchange Act of 1934 of nationally recognized standing or an Affiliate thereof, (b) in the case of a U.S. Government Security, any primary dealer in U.S. Government Securities, and (c) in the case of any foreign Portfolio Investment, any foreign broker-dealer of internationally recognized standing or an Affiliate thereof, in the case of each of clauses (a), (b) and (c) above, as set forth on Schedule II or any other bank or broker-dealer acceptable to the Administrative Agent in its reasonable discretion.

**“Approved Fund”** shall mean any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers or manages a Lender.

**“Approved Pricing Service”** shall mean a pricing or quotation service as set forth on Schedule II or any other pricing or quotation service approved by the Board of Directors of Borrower and designated in writing to the Administrative Agent (which designation shall be accompanied by a copy of the resolutions of the Board of Directors of the Borrower that such pricing or quotation service has been approved by the Borrower).

**“Approved Third Party Appraiser”** means any independent third party appraisal firm designated by the Borrower in writing to the Administrative Agent (which designation shall be accompanied by a copy of the resolution of the Board of Directors of the Borrower that such firm has been approved by the Borrower for purposes for assisting the Board of Directors of the Borrower in making valuations of portfolio assets). It is understood and agreed that, so long as the same is an independent third party appraisal firm approved by the Board of Directors of the Borrower, Duff & Phelps shall be deemed to be an Approved Third Party Appraiser.

**“Asset Coverage Ratio”** shall mean as of any date, the ratio, determined on a consolidated basis, without duplication, in accordance with GAAP, of (i) the value of total assets of the Borrower and its Subsidiaries, less all liabilities (other than Indebtedness, including Indebtedness under the Loan Documents, Other Senior Secured Indebtedness and all obligations and liabilities to purchase, redeem, retire or otherwise acquire for value preferred equity of the Borrower and its Subsidiaries) of the Borrower and its Subsidiaries as of such date, to (ii) the aggregate amount of Indebtedness of the Borrower and its Subsidiaries (which, for the avoidance of doubt, shall include Other Senior Secured Indebtedness (if any) and shall exclude all obligations and liabilities to purchase, redeem, retire or otherwise acquire for value Preferred Stock of the Borrower and its Subsidiaries).



**“Assignment and Acceptance”** shall mean an assignment and acceptance entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.4(b)) and accepted by the Administrative Agent, in the form of Exhibit A attached hereto or any other form approved by the Administrative Agent.

**“Availability Period”** shall mean the period from the Closing Date to but excluding the Revolving Commitment Termination Date.

**“Bank Loans”** means debt obligations (including, without limitation, term loans, revolving loans, debtor-in-possession financings, the funded and unfunded portion of revolving credit lines and letter of credit facilities and other similar loans and investments including interim loans and senior subordinated loans) which are generally under a syndicated loan or credit facility.

**“Bank Product Amount”** shall have the meaning set forth in the definition of **“Bank Product Provider”**.

**“Bank Product Obligations”** shall mean, collectively, all obligations and other liabilities of any Loan Party to any Bank Product Provider in respect of any of the following services (**“Bank Products”**) provided to such Loan Party by such Bank Product Provider: (a) any treasury or other cash management services, including deposit accounts, automated clearing house (ACH) origination and other funds transfer, depository (including cash vault and check deposit), zero balance accounts and sweeps, return items processing, controlled disbursement accounts, positive pay, lockboxes and lockbox accounts, account reconciliation and information reporting, payables outsourcing, payroll processing, trade finance services, investment accounts and securities accounts, and (b) card services, including credit card (including purchasing card and commercial card), prepaid cards, including payroll, stored value and gift cards, merchant services processing, and debit card services.

**“Bank Product Provider”** means any Person that, at the time it provides any Bank Products to any Loan Party, (i) is a Lender or an Affiliate of a Lender and (ii) except when the Bank Product Provider is SunTrust Bank and its Affiliates, has provided prior written notice to the Administrative Agent which has been acknowledged by the Borrower of (x) the existence of such Bank Product, (y) the maximum dollar amount of obligations arising thereunder (the **“Bank Product Amount”**) and (z) the methodology to be used by such parties in determining the obligations under such Bank Product from time to time. In no event shall any Bank Product Provider acting in such capacity be deemed a Lender for purposes hereof to the extent of and as to Bank Products except that each reference to the term “Lender” in Article IX and Section 10.4 shall be deemed to include such Bank Product Provider and in no event shall the approval of any such person in its capacity as Bank Product Provider be required in connection with the release or termination of any security interest or Lien of the Administrative Agent. No Bank Product Amount may be established at any time that a Default or Event of Default exists.

**“Base Rate”** shall mean the highest of (i) the rate which the Administrative Agent announces from time to time as its prime lending rate, as in effect from time to time, (ii) the Federal Funds Rate, as in effect from time to time, plus one-half of one percent (0.50%) *per annum* and (iii) the Adjusted LIBO Rate determined on a daily basis for an Interest Period of one (1) month, plus one percent (1.00%) *per annum* (any changes in such rates to be effective as of the date of any change in such rate). The Administrative Agent’s prime lending rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. The Administrative Agent may make commercial loans or other loans at rates of interest at, above, or below the Administrative Agent’s prime lending rate.

**“Borrower”** shall have the meaning in the introductory paragraph hereof.

“**Borrowing**” shall mean a borrowing consisting of Loans of the same Class and Type, made, converted or continued on the same date and in case of Eurodollar Loans, as to which a single Interest Period is in effect.

“**Borrowing Availability**” shall mean, at any time, (i) the Borrowing Limit less (ii) the aggregate principal amount of the Revolving Credit Exposure of all Lenders.

“**Borrowing Base**” shall have the meaning assigned to such term in Section 5.12.

“**Borrowing Base Certificate**” shall mean a certificate of the chief financial officer or chief executive officer of the Borrower, substantially in the form of Exhibit 5.12.

“**Borrowing Base Deficiency**” shall mean, at any date on which the same is determined, the amount, if any, that (a) the aggregate principal amount of the Borrowing Base Indebtedness as of such date exceeds (b) the Borrowing Base as of such date.

“**Borrowing Base Indebtedness**” shall mean the Revolving Credit Exposure *plus* the outstanding principal amount of the Term Loans *plus* the outstanding principal amount of Other Senior Secured Indebtedness.

“**Borrowing Limit**” shall mean, at any time, the lesser of (i) the Revolving Commitment Amount at such time and (ii) the Borrowing Base at such time as reported in the Borrowing Base Certificate most recently delivered to the Lenders pursuant to Section 5.1(e) minus the aggregate outstanding principal amount of the Term Loans minus the aggregate outstanding principal amount of the Other Senior Secured Indebtedness.

“**Business Day**” shall mean (i) any day other than a Saturday, Sunday or other day on which commercial banks in Atlanta, Georgia and New York, New York are authorized or required by law to close and (ii) if such day relates to a Borrowing of, a payment or prepayment of principal or interest on, a conversion of or into, or an Interest Period for, a Eurodollar Loan or a notice with respect to any of the foregoing, any day on which banks are not open for dealings in Dollars are carried on in the London interbank market.

“**Capital Lease Obligations**” of any Person shall mean all obligations of such Person to pay rent or other amounts under any lease (or other arrangement conveying the right to use) of real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“**Capital Stock**” of any Person shall mean all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, Preferred Stock or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934).

“**Cash**” shall mean any immediately available funds in Dollars or in any currency other than Dollars which is freely convertible currency.

“**Cash Collateralize**” shall mean, in respect of any obligations, to provide and pledge (as a first priority perfected security interest) cash collateral for such obligations in Dollars, with the

Administrative Agent pursuant to documentation in form and substance, reasonably satisfactory to the Administrative Agent (and “*Cash Collateralization*” has a corresponding meaning).

“*Cash Equivalents*” shall mean investments (other than Cash) that are one or more of the following obligations:

(a) U.S. Government Securities, in each case maturing within one year from the acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such acquisition date, a credit rating of at least A1 from S&P and at least P1 from Moody’s;

(c) investments in certificates of deposit, banker’s acceptances and time deposits maturing within 180 days from the date of acquisition thereof (i) issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States or America or any State thereof; provided that such certificates of deposit, banker’s acceptances and time deposits are held in a securities account (as defined in the Uniform Commercial Code) through which the Administrative Agent can perfect a security interest therein and (ii) having, at such date of acquisition, a credit rating of at least A1 from S&P and at least P1 from Moody’s;

(d) fully collateralized repurchase agreements with a term of not more than 30 days from the date of acquisition thereof for U.S. Government Securities and entered into with a financial institution satisfying the criteria described in clause (c) of this definition;

provided, that (i) in no event shall Cash Equivalents include any obligation that provides for the payment of interest alone (for example, interest-only securities or “IOs”); (ii) if any of Moody’s or S&P changes its rating system, then any ratings included in this definition shall be deemed to be an equivalent rating in a successor rating category of Moody’s or S&P, as the case may be; (iii) Cash Equivalents (other than U.S. Government Securities or repurchase agreements) shall not include any such investment of more than 10% of total assets of the Loan Parties in any single issuer; and (iv) in no event shall Cash Equivalents include any obligation that is not denominated in Dollars.

“*Change in Control*” shall mean the occurrence of one or more of the following events: (i) any sale, lease, exchange or other transfer (in a single transaction or a series of related transactions) of all or substantially all of the assets of the Borrower to any Person or “group” (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder in effect on the date hereof), (ii) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or “group” (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof) of 35% or more of the outstanding shares of the voting stock of the Borrower; (iii) during any period of 24 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (A) who were members of that board or equivalent governing body on the first day of such period, (B) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (A) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body, or (C) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (A) and (B) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (for the purposes of determining such majority, such majority shall not include, in the case of both clause (B) and clause (C), any individual

whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors); or (iv) KA Fund Advisors, LLC (or an Affiliate thereof approved by the Administrative Agent (such approval not to be unreasonably withheld)) ceases to retain its advisory duties over the Borrower in effect on the Closing Date.

**“Change in Law”** shall mean (i) the adoption of any applicable law, rule or regulation after the date of this Agreement, (ii) any change in any applicable law, rule or regulation, or any change in the interpretation, implementation or application thereof, by any Governmental Authority after the date of this Agreement, or (iii) compliance by any Lender (or its Applicable Lending Office) (or, for purposes of Section 2.16(b), by the Parent Company of such Lender, if applicable) 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 for purposes of this Agreement, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

**“Class”**, when used in reference to any Loan or Borrowing, refers to whether such Loan, or each of the Loans comprising such Borrowing, is a Revolving Loan or a Term Loan and, when used in reference to any Commitment, refers to whether such Commitment is a Revolving Commitment or a Term Loan Commitment.

**“Clearing Accounts”** shall mean the accounts set forth on Part C of Schedule III, or such other accounts approved by the Administrative Agent, such approval not to be unreasonably withheld.

**“Closing Date”** shall mean the date on which the conditions precedent set forth in Section 3.1 and Section 3.2 have been satisfied or waived in accordance with Section 10.2.

**“Co-Documentation Agents”** shall have the meaning assigned to such term in the opening paragraph hereof.

**“Code”** shall mean the Internal Revenue Code of 1986, as amended and in effect from time to time.

**“Collateral”** shall mean (i) all portfolio assets, (ii) Cash, (iii) all tangible and intangible property, real and personal, of any Loan Party in each case that is, or is purported or required to be, the subject of a Lien granted pursuant to a Security Document to the Administrative Agent for the benefit of the Lenders to secure the whole or any part of the Obligations or any Guarantee thereof, and shall include, without limitation, all loans (including all supporting obligations and collateral therefor), investments, cash, deferred interest, warrants, options, collections, fees, loan and investment portfolio, accounts, inventory, equipment, general intangibles, goods, documents, contracts, intercompany obligations, stock, securities, notes, and all proceeds of the foregoing and all casualty insurance proceeds and condemnation awards with respect to any of the foregoing.

**“Collateral Accounts”** shall mean the accounts set forth on Part B of Schedule III, or such other accounts approved by the Administrative Agent, such approval not to be unreasonably withheld.

“**Collateral Agent**” has the meaning set forth in the Intercreditor Agreement.

“**Commitment**” shall mean a Revolving Commitment, a Term Loan Commitment or any combination thereof (as the context shall permit or require).

“**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.

“**Compliance Certificate**” shall mean a certificate from the chief executive officer or the chief financial officer of the Borrower in the form of, and containing the certifications set forth in, the certificate attached hereto as Exhibit 5.1(c).

“**Contractual Obligation**” of any Person shall mean any provision of any security issued by such Person or of any agreement, instrument or undertaking under which such Person is obligated or by which it or any of the property in which it has an interest is bound.

“**Control Agreement**” shall mean each Control Agreement by and among the Borrower, the Administrative Agent (or the Collateral Agent in accordance with the terms of the Intercreditor Agreement) and the depository bank, custodian or securities intermediary at which the account subject to such agreement is held, as amended, restated, supplemented or otherwise modified from time to time.

“**Controlled Entity**” means any Affiliate of the Borrower (other than any Subsidiary thereof) that the Borrower Controls or any Affiliate that Controls the Borrower. As used in this definition, “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Default**” shall mean any condition or event that, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“**Defaulting Lender**” shall mean, at any time, subject to Section 2.23(b), any Lender as to which the Administrative Agent has notified the Borrower that (i) such Lender has failed for three or more Business Days to comply with its obligations under this Agreement to make a Loan or to make any other payment due hereunder (a “**funding obligation**”), unless such Lender has notified the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding has not been satisfied (which conditions precedent, together with any applicable Default, will be specifically identified in such writing), (ii) any Lender that has notified the Administrative Agent in writing, or has stated publicly, that it does not intend to comply with any such funding obligation hereunder, unless such writing or public statement states that such position is based on such Lender’s determination that one or more conditions precedent to funding cannot be satisfied (which conditions precedent, together with any applicable Default, will be specifically identified in such writing or public statement), (iii) any Lender that has defaulted on its obligation to fund generally under any other loan agreement, credit agreement or other financing agreement, (iv) any Lender that has, for three (3) or more Business Days after written request of the Administrative Agent or the Borrower, failed to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender will cease to be a Defaulting Lender pursuant to this clause (iv) upon the Administrative Agent’s and the Borrower’s receipt of such written confirmation), or (v) any Lender with respect to which a Lender Insolvency Event has occurred and is continuing. Any determination by the Administrative Agent that a Lender is a Defaulting Lender will be conclusive and binding, absent manifest error, and such Lender shall be deemed to be a

Defaulting Lender (subject to Section 2.23(b)) upon notification of such determination by the Administrative Agent to the Borrower and the Lenders.

**“Default Interest”** shall have the meaning set forth in Section 2.11(c).

**“Dollar(s)”** and the sign “\$” shall mean lawful money of the United States of America.

**“Eligible Assignee”** shall mean (i) a Lender; (ii) an Affiliate of a Lender; (iii) an Approved Fund; and (iv) any other Person (other than a natural Person) approved by the Administrative Agent, and unless an Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed). If the consent of the Borrower to an assignment or to an Eligible Assignee is required hereunder (including a consent to an assignment which does not meet the minimum assignment thresholds specified in paragraph (b)(i) of Section 10.4), the Borrower shall be deemed to have given its consent five Business Days after the date notice thereof has actually been delivered by the assigning Lender (through the Administrative Agent) to the Borrower, unless such consent is expressly refused by the Borrower prior to such fifth Business Day.

**“Environmental Laws”** shall mean all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by or with any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters.

**“Environmental Liability”** shall mean any liability, contingent or otherwise (including any liability for damages, costs of environmental investigation and remediation, costs of administrative oversight, fines, natural resource damages, penalties or indemnities), of the Borrower directly or indirectly resulting from or based upon (i) any actual or alleged violation of any Environmental Law, (ii) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (iii) any actual or alleged exposure to any Hazardous Materials, (iv) the Release or threatened Release of any Hazardous Materials or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

**“Equity Interests”** shall mean 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”** shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute.

**“ERISA Affiliate”** shall mean any trade or business (whether or not incorporated), which, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for the purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

**“ERISA Event”** shall mean (i) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (ii) the failure of any Plan to meet the minimum funding standard applicable to the Plan for a plan year under Section 412 of the Code or Section 302 of ERISA, whether or not waived; (iii) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (iv) the incurrence by

the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (v) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator appointed by the PBGC of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (vi) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (vii) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“***Eurodollar***” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bears interest at a rate determined by reference to the Adjusted LIBO Rate.

“***Eurodollar Reserve Percentage***” shall mean the aggregate of the maximum reserve percentages (including, without limitation, any emergency, supplemental, special or other marginal reserves) expressed as a decimal (rounded upwards to the next 1/100<sup>th</sup> of 1%) in effect on any day to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate pursuant to regulations issued by the Board of Governors of the Federal Reserve System (or any Governmental Authority succeeding to any of its principal functions) with respect to eurocurrency funding (currently referred to as “eurocurrency liabilities” under Regulation D). Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D. The Eurodollar Reserve Percentage shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“***Event of Default***” shall have the meaning provided in Article VIII.

“***Excluded Swap Obligation***” means, with respect to any Subsidiary Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Subsidiary Guarantor of, or the grant by such Subsidiary Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Subsidiary Guarantor’s failure for any reason not to constitute an “eligible contract participant” as defined in the Commodity Exchange Act at the time the Guarantee of such Subsidiary Guarantor becomes effective with respect to such related Swap Obligation.

“***Excluded Taxes***” shall mean 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 hereunder, (i) taxes imposed on (or measured by) its net income, franchise taxes, and branch profits taxes, in each case, (a) imposed by the United States of America, or by the 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, or (b) that are Other Connection Taxes, (ii) in the case of a Foreign Lender, any withholding tax that (x) is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement, or (y) is imposed on amounts payable to such Foreign Lender at any time that such Foreign Lender designates a new lending office, other than taxes that have accrued prior to the designation of such lending office that are otherwise not Excluded Taxes, (iii) taxes attributable to such recipient’s failure to comply with Section 2.18(e), and (iv) any taxes imposed under FATCA.

**“Existing Credit Agreement”** shall have the meaning given to such term in the recitals of this Agreement.

**“Existing Lenders”** shall mean all “Lenders” (as such term is defined in the Existing Credit Agreement).

**“FATCA”** shall mean 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 or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b) of the Code.

**“Federal Funds Rate”** shall mean, for any day, the rate per annum (rounded upwards, if necessary, to the next 1/100<sup>th</sup> of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with member banks of the Federal Reserve System arranged by Federal funds brokers, as published by the Federal Reserve Bank of New York on the next succeeding Business Day or if such rate is not so published for any Business Day, the Federal Funds Rate for such day shall be the average rounded upwards, if necessary, to the next 1/100th of 1% of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by the Administrative Agent; provided that if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero.

**“Fee Letter”** shall mean that certain fee letter, dated as of January 28, 2014, executed by the Administrative Agent and accepted by Borrower.

**“First Amendment”** shall mean that certain First Amendment to Second Amended and Restated Senior Secured Revolving Credit Agreement, dated as of the First Amendment Effective Date, by and among the Borrower, the Lenders and the Administrative Agent.

**“First Amendment Effective Date”** shall mean August 28, 2014.

**“First Amendment Fee Letter”** shall mean that certain fee letter, dated as of August 11, 2014, executed by the Administrative Agent and SunTrust Robinson Humphrey, Inc., as arranger, and accepted by the Borrower.

**“First Lien Bank Loan”** means a Bank Loan that is entitled to the benefit of a first lien and first priority perfected security interest on a substantial portion of the assets of the respective borrower and guarantors obligated in respect thereof.

**“Fiscal Quarter”** shall mean any fiscal quarter of the Borrower.

**“Fiscal Year”** shall mean any fiscal year of the Borrower.

**“Foreign Lender”** shall mean any Lender that is not a United States person under Section 7701(a)(30) of the Code.

**“GAAP”** shall mean generally accepted accounting principles in the United States applied on a consistent basis and subject to the terms of Section 1.3.

**“Governmental Authority”** shall mean 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.

“**Guarantee**” of or by any Person (the “**guarantor**”) shall mean any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly and including any obligation, direct or indirect, of the guarantor (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) as an account party in respect of any letter of credit or letter of guaranty issued in support of such Indebtedness or obligation; provided, that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which Guarantee is made or, if not so stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith. The term “Guarantee” used as a verb has a corresponding meaning.

“**Hazardous Materials**” shall mean all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“**Hedging Obligations**” of any Person shall mean any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired under (i) any and all Hedging Transactions, (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Hedging Transactions and (iii) any and all renewals, extensions and modifications of any Hedging Transactions and any and all substitutions for any Hedging Transactions.

“**Hedging Transaction**” of any Person shall mean (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into by such Person that is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, spot transaction, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether or not any such transaction is governed by or subject to any master agreement and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement.

“**High Yield Securities**” means debt Securities (including convertible debt) and Preferred Stock (including convertible Preferred Stock), in each case (a) issued by public or private issuers, (b)

issued pursuant to an effective registration statement or pursuant to Rule 144A under the Securities Act (or any successor provision thereunder) and (c) that are not Cash Equivalents or Bank Loans.

**“Indebtedness”** of any Person shall mean, without duplication (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person in respect of the deferred purchase price of property or services (other than trade payables incurred in the ordinary course of business on terms customary in the trade), (iv) all obligations of such Person under any conditional sale or other title retention agreement(s) relating to property acquired by such Person, (v) Capital Lease Obligations of such Person, (vi) obligations, contingent or otherwise, of such Person in respect of letters of credit, acceptances or similar extensions of credit, (vii) guaranties by such Person of the type of Indebtedness described in clauses (i) through (vi) above, (viii) all Indebtedness of a third party secured by any Lien on property owned by such Person, whether or not such Indebtedness has been assumed by such Person, (ix) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any common stock of such Person, (x) Off-Balance Sheet Liabilities retained in connection with asset securitization programs, Synthetic Leases, sale and leaseback transactions or other similar obligations arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the consolidated balance sheet of such Person and its subsidiaries (xi) Net Mark to Market Exposure on all Hedging Obligations, and (xii) obligations under any derivative contract including any commodity agreement, or foreign exchange agreement. The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer, except to the extent that the terms of such Indebtedness provide that such Person is not liable therefor.

**“Indemnified Taxes”** shall mean Taxes other than Excluded Taxes.

**“Information Memorandum”** shall mean the confidential executive summary relating to the Loan Parties and the transactions contemplated by this Agreement and the other Loan Documents.

**“Intercreditor Agreement”** shall mean an intercreditor agreement with the Administrative Agent (on behalf of the Lenders) in the form of Exhibit 7.1(g) attached hereto and made a part hereof, with such modifications or changes to such form of intercreditor agreement as are requested by the Borrower or the Pari Passu Creditor and approved by the Administrative Agent in the Administrative Agent’s reasonable discretion.

**“Interest Period”** shall mean with respect to any Eurodollar Borrowing, a period of one, two, three or six months; provided, that:

(i) the initial Interest Period for such Borrowing shall commence on the date of such Borrowing (including the date of any conversion from a Borrowing of another Type), and each Interest Period occurring thereafter in respect of such Borrowing shall commence on the day on which the next preceding Interest Period expires;

(ii) if any Interest Period would otherwise end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day, unless such Business Day falls in another calendar month, in which case such Interest Period would end on the next preceding Business Day;

(iii) any Interest Period which begins on the last Business Day of a calendar month or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period shall end on the last Business Day of such calendar month;

(iv) no Interest Period may extend beyond (a) with respect to Revolving Loans, the Revolving Commitment Termination Date and (b) with respect to Term Loans, the Term Loan Maturity Date.

**“Investment Advisory Agreement”** shall mean that certain Investment Management Agreement, dated as of September 20, 2006, by and between Borrower and KA Fund Advisors, LLC, as amended by that certain Amendment to Investment Management Agreement dated as of July 1, 2008.

**“Investment Company Act”** shall mean the Investment Company Act of 1940, as amended and in effect from time to time.

**“Investment Objective”** shall mean those investment objectives, policies and restrictions that are set forth in Schedule 4.10 subject to other modifications or supplements as may be adopted by the Borrower from time to time and reflected in filings with the Securities and Exchange Commission that do not result in a Material Adverse Effect.

**“Lender Insolvency Event”** shall mean that (i) a Lender or its Parent Company is insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors, or (ii) a Lender or its Parent Company is the subject of a bankruptcy, insolvency, reorganization, liquidation or similar proceeding, or a receiver, trustee, conservator, custodian or the like has been appointed for such Lender or its Parent Company, or such Lender or its Parent Company has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment, or (iii) a Lender or its Parent Company has been adjudicated as, or determined by any Governmental Authority having regulatory authority over such Person or its assets to be, insolvent; provided that, for the avoidance of doubt, a Lender Insolvency Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any equity interest in or control of a Lender or a Parent Company thereof by a Governmental Authority or an instrumentality thereof.

**“Lender-Related Hedge Provider”** means any Person that, at the time it enters into a Hedging Transaction with any Loan Party, (i) is a Lender or an Affiliate of a Lender and (ii) except when the Lender-Related Hedge Provider is SunTrust Bank and its Affiliates, has provided prior written notice to the Administrative Agent which has been acknowledged by the Borrower of (x) the existence of such Hedging Transaction, and (y) the methodology to be used by such parties in determining the obligations under such Hedging Transaction from time to time. In no event shall any Lender-Related Hedge Provider acting in such capacity be deemed a Lender for purposes hereof to the extent of and as to Hedging Obligations except that each reference to the term “Lender” in Article IX and Section 10.4 shall be deemed to include such Lender-Related Hedge Provider. In no event shall the approval of any such Person in its capacity as Lender-Related Hedge Provider be required in connection with the release or termination of any security interest or Lien of the Administrative Agent.

**“Lenders”** shall have the meaning assigned to such term in the opening paragraph of this Agreement and shall include, where appropriate, each Additional Lender that joins this Agreement pursuant to Section 2.20.

**“Lien”** shall mean any mortgage, pledge, security interest, lien (statutory or otherwise), charge, encumbrance, hypothecation, assignment, deposit arrangement, or other arrangement having the practical effect of the foregoing or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having the same economic effect as any of the foregoing).

**“Loan Documents”** shall mean, collectively, this Agreement, any promissory notes issued hereunder, the Subsidiary Guarantee Agreements, the Security Documents, any Intercreditor Agreement, the Fee Letter, the First Amendment, the First Amendment Fee Letter, all Notices of Revolving Borrowing, all Notices of Conversion/Continuation, all Compliance Certificates, all Borrowing Base Certificates and any and all other instruments, agreements, documents, certificates and writings executed in connection with any of the foregoing.

**“Loan Parties”** shall mean the Borrower and the Subsidiary Guarantors.

**“Loans”** shall mean all Revolving Loans and Term Loans in the aggregate or any of them, as the context shall require.

**“Lock-up Agreement”** shall mean any agreement containing provisions (other than Right of First Offer and Tag Along Rights) applicable to a Portfolio Investment that prohibit the Borrower from transferring such Portfolio Investment to any other Person; provided, however, that any agreement that permits the transfer of a Portfolio Investment upon the transferee’s agreement to such provisions shall not be deemed to be a “Lock-Up Agreement” so long as the Value of the Portfolio Investment subject to such provisions reflects such conditions on transfer.

**“Lock-up Term”** shall mean, as of any date of determination, the number of days required to be elapsed before the provisions in the applicable Lock-up Agreement that prohibit, restrict or impose any condition upon the ability of the Borrower or any Subsidiary to transfer its property or assets expire or are of no force or effect.

**“Long-Term U.S. Government Securities”** means U.S. Government Securities maturing more than one year from the applicable date of determination.

**“Material Adverse Effect”** shall mean, with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singularly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences whether or not related, a material adverse change in, or a material adverse effect on, (i) the business, results of operations, financial condition, assets, liabilities or prospects of the Borrower or of the Borrower and its Subsidiaries, taken as a whole, which has had or could reasonably be expected to have a material adverse effect on the ability of the Loan Parties to perform any of their respective obligations under the Loan Documents, (ii) the rights and remedies of the Administrative Agent and the Lenders under any of the Loan Documents or (iii) the legality, validity or enforceability of any of the Loan Documents.

**“Material Indebtedness”** shall mean Indebtedness (other than the Loans) and Hedging Obligations of the Borrower or any of its Subsidiaries, individually or in an aggregate principal amount exceeding \$5,000,000. For purposes of determining the amount of attributed Indebtedness from Hedging Obligations, the “principal amount” of any Hedging Obligations at any time shall be the Net Mark-to-Market Exposure of such Hedging Obligations.

**“MLP Subordinated Units”** shall mean units of a limited partnership or a limited liability company that has elected to be a partnership that are expressly subordinated by the terms of the limited partnership agreement pursuant to which such units were issued.

**“MLP Units”** shall mean Public MLP Common and Preferred Units and Private MLP Common and Preferred Units.

“**Moody’s**” shall mean Moody’s Investors Service, Inc.

“**Multiemployer Plan**” shall have the meaning set forth in Section 4001(a)(3) of ERISA.

“**Net Mark to Market Exposure**” of any Person shall mean, as of any date of determination with respect to any Hedging Obligation, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from such Hedging Obligation. “Unrealized losses” shall mean the fair market value of the cost to such Person of replacing the Hedging Transaction giving rise to such Hedging Obligation as of the date of determination (assuming the Hedging Transaction were to be terminated as of that date), and “unrealized profits” means the fair market value of the gain to such Person of replacing such Hedging Transaction as of the date of determination (assuming such Hedging Transaction were to be terminated as of that date).

“**Non-Defaulting Lender**” shall mean, at any time, a Lender that is not a Defaulting Lender or a Potential Defaulting Lender.

“**Non-Performing First Lien Bank Loans**” means First Lien Bank Loans other than Performing First Lien Bank Loans.

“**Non-Performing High Yield Securities**” means High Yield Securities other than Performing High Yield Securities and Performing Non-Cash Pay High Yield Securities.

“**Non-Performing Bank Loans**” means, collectively, Non-Performing First Lien Bank Loans, Non-Performing Second Lien Bank Loans, and Non-Performing Unsecured Bank Loans.

“**Non-Performing Public MLP Common and Preferred Units**” means Public MLP Common and Preferred Units other than Performing Public MLP Common and Preferred Units.

“**Non-Performing Second Lien Bank Loans**” means Second Lien Bank Loans other than Performing Second Lien Bank Loans.

“**Non-Performing Unsecured Bank Loans**” means Unsecured Bank Loans other than Performing Unsecured Bank Loans.

“**Notice of Conversion/Continuation**” shall mean the notice given by the Borrower to the Administrative Agent in respect of the conversion or continuation of an outstanding Borrowing as provided in [Section 2.6\(b\)](#).

“**Notice of Revolving Borrowing**” shall have the meaning as set forth in [Section 2.3](#).

“**Obligations**” shall mean (a) all amounts owing by the Borrower to the Administrative Agent or any Lender pursuant to or in connection with this Agreement or any other Loan Document, including without limitation, all principal, interest (including any interest accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), all reimbursement obligations, fees, expenses, indemnification and reimbursement payments, costs and expenses (including all fees and expenses of counsel to the Administrative Agent and any Lender incurred pursuant to this Agreement or any other Loan Document), whether direct or indirect, absolute or contingent, liquidated or unliquidated, now existing or hereafter arising hereunder or thereunder, (b) all Hedging Obligations owed by any Loan Party to any Lender-Related Hedge Provider,

and (c) all Bank Product Obligations, together with all renewals, extensions, modifications or refinancings of any of the foregoing; provided, that “Obligations” shall exclude any Excluded Swap Obligations.

“**OFAC**” shall mean the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“**Off-Balance Sheet Liabilities**” of any Person shall mean (i) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (ii) any liability of such Person under any sale and leaseback transactions that do not create a liability on the balance sheet of such Person, (iii) any Synthetic Lease Obligation or (iv) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person.

“**Offer Period**” shall mean a period during which a Person has the right to submit an offer to the holder of a security if such holder undertakes any action to sell, transfer or otherwise liquidate, or to market or offer for sale, or solicit offers to purchase such Security.

“**OSHA**” shall mean the Occupational Safety and Health Act of 1970, as amended from time to time, and any successor statute.

“**Other Connection Taxes**” shall mean, with respect to any recipient, taxes imposed as a result of a present or former connection between such recipient and the jurisdiction imposing such tax (other than connections arising from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to, or enforced any Loan Document).

“**Other Senior Secured Indebtedness**” shall have the meaning assigned to such term in Section 7.1(g).

“**Other Taxes**” shall mean any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“**Parent Company**” shall mean, with respect to a Lender, the bank holding company (as defined in Federal Reserve Board Regulation Y), if any, of such Lender, and/or any Person owning, beneficially or of record, directly or indirectly, a majority of the shares of such Lender.

“**Pari Passu Creditor**” shall have the meaning assigned to such term in Section 7.1(g).

“**Participant**” shall have the meaning set forth in Section 10.4(d).

“**Patriot Act**” shall have the meaning set forth in Section 10.14.

“**Payment Office**” shall mean the office of the Administrative Agent located at 303 Peachtree Street, N.E., Atlanta, Georgia 30308, or such other location as to which the Administrative Agent shall have given written notice to the Borrower and the other Lenders.

“**PBGC**” shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA, and any successor entity performing similar functions.

**“Perfection Certificate”** shall have the meaning assigned to such term in the Security Agreement.

**“Performing”** means (a) with respect to any Portfolio Investment that is debt or High Yield Securities, the issuer of such Portfolio Investment is not in default of any payment obligations in respect thereof, after the expiration of any applicable grace period, (b) with respect to any Portfolio Investment that is Preferred Stock, the issuer of such Portfolio Investment has not failed to meet any scheduled redemption obligations or to pay its latest declared cash dividend, after the expiration of any applicable grace period, and (c) with respect to any Portfolio Investment that is MLP Units, the issuer of such Portfolio Investment has not failed to pay distributions in its most recent fiscal quarter or to pay its latest declared cash dividend and there is no existing default under the issuer’s partnership agreement.

**“Performing Cash Pay Bank Loans”** means First Lien Bank Loans, Second Lien Bank Loans and Unsecured Bank Loans (a) as to which, at the time of determination, all of the interest on which is payable in cash not less frequently than quarterly and (b) which are Performing.

**“Performing Cash Pay High Yield Securities”** means High Yield Securities (a) as to which, at the time of determination, not less than 2/3rds of the interest (including accretions and “pay-in-kind” interest) for the current monthly, quarterly, semi-annual or annual period (as applicable) is payable in cash and (b) which are Performing.

**“Performing Common Equity”** shall mean Capital Stock (other than Preferred Stock) and warrants of an issuer all of whose outstanding debt is Performing.

**“Performing First Lien Bank Loans”** means First Lien Bank Loans which are Performing.

**“Performing Non-Cash Pay Bank Loans”** means Performing Bank Loans other than Performing Cash Pay Bank Loans.

**“Performing Non-Cash Pay High Yield Securities”** means Performing High Yield Securities other than Performing Cash Pay High Yield Securities.

**“Performing Private MLP Common and Preferred Units”** means Private MLP Common and Preferred Units (a) as to which, at the time of determination, not less than 80% of the minimum quarterly distribution for the most recent fiscal quarter period then ending for such issuer of such MLP Units has been paid in cash and (b) which are Performing.

**“Performing Public MLP Common and Preferred Units”** means Public MLP Common and Preferred Units, and Securities convertible into Public MLP Common and Preferred Units, which are Performing.

**“Performing Second Lien Bank Loans”** means Second Lien Bank Loans which are Performing.

**“Performing Unsecured Bank Loans”** shall mean Unsecured Bank Loans which are Performing.

**“Performing Warrants”** shall mean Warrants which are Performing.

**“Permitted Encumbrances”** shall mean

(i) Liens imposed by law for taxes not yet due or which are being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves are being maintained in accordance with GAAP;

(ii) statutory Liens of landlords, carriers, warehousemen, mechanics, materialmen and similar Liens arising by operation of law in the ordinary course of business for amounts not yet due or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP;

(iii) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(iv) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(v) judgment and attachment liens not giving rise to an Event of Default or Liens created by or existing from any litigation or legal proceeding that are currently being contested in good faith by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP;

(vi) customary rights of set-off, revocation, refund or chargeback under deposit agreements or under the Uniform Commercial Code or common law of banks or other financial institutions where Borrower or any of its Subsidiaries maintains deposits (other than deposits intended as cash collateral) in the ordinary course of business;

(vii) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of the Borrower and its Subsidiaries taken as a whole;

(viii) Liens imposed on amounts held in the Borrower's or its Subsidiaries' Approved Brokerage Accounts in accordance with option transactions or other similar transactions; provided, that in no event shall the sum of the fair market value of the collateral securing (A) such Liens or the obligations secured thereby and (B) the Liens or the obligations secured thereby provided for in clause (ix) below exceed \$5,000,000 in the aggregate at any time;

(ix) Liens securing obligations incurred under any Clearing Account; provided, that the custodian of such Clearing Account and the Administrative Agent have entered into an agreement in form and substance satisfactory to the Administrative Agent which, among other things, requires all amounts and Securities in excess of \$1,000,000 to be transferred prior to the end of each Business Day to a Collateral Account; and

(x) Liens to secure Other Senior Secured Indebtedness to the extent permitted by a duly executed Intercreditor Agreement;

provided, that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness, except for (1) Indebtedness set forth on Schedule 7.1 hereto and (2) Indebtedness permitted by the foregoing clause (x).



“**Person**” shall mean any individual, partnership, firm, corporation, association, joint venture, limited liability company, trust or other entity, or any Governmental Authority.

“**Plan**” shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“**Pledge Agreement**” shall mean that certain Amended and Restated Pledge Agreement, dated as of the Closing Date, by the Borrower and the Subsidiary Guarantors from time to time party thereto in favor of the Administrative Agent for the benefit of the Lenders, as amended, restated, supplemented or otherwise modified from time to time.

“**Potential Defaulting Lender**” shall mean, at any time, a Lender (i) as to which the Administrative Agent has notified the Borrower that an event of the kind referred to in the definition of “Lender Insolvency Event” has occurred and is continuing in respect of any financial institution affiliate of such Lender, (ii) that has (or its Parent Company or a financial institution affiliate thereof has) notified the Administrative Agent, or has stated publicly, that it will not comply with its funding obligations under any other loan agreement or credit agreement or other similar/other financing agreement or (iii) that has, or whose Parent Company has, a non-investment grade rating from Moody’s or S&P or another nationally recognized rating agency. The Administrative Agent will promptly send to all parties hereto a copy of any notice to the Borrower provided for in this definition.

“**Portfolio Investment**” means any investment held by the Borrower in its asset portfolio (and, solely for purposes of determining the Borrowing Base, Cash). Notwithstanding the foregoing, nothing herein shall limit the provisions of Section 5.12(a)(i), which provides that, for purposes of this Agreement, all determinations of whether an investment is to be included as a Portfolio Investment shall be determined on a settlement-date basis, provided that no such investment shall be included as a Portfolio Investment to the extent it has not been paid for in full.

“**Preferred Stock,**” as applied to the Capital Stock of any Person, means Capital Stock of such Person of any class or classes (however designated) that ranks prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of such Person, to any shares (or other interests) of other Capital Stock of such Person, and shall include, without limitation, cumulative preferred, non-cumulative preferred, mandatorily redeemable, participating preferred and convertible preferred Capital Stock.

“**Pro Rata Share**” shall mean (i) with respect to any Class of Commitment or Loan of any Lender at any time, a percentage, the numerator of which shall be such Lender’s Commitment of such Class (or, if such Commitment has been terminated or expired or the Loans have been declared to be due and payable, such Lender’s Revolving Credit Exposure or Term Loan, as applicable), and the denominator of which shall be the sum of all Commitments of such Class of all Lenders (or, if such Commitments have been terminated or expired or the Loans have been declared to be due and payable, all Revolving Credit Exposure or Term Loans, as applicable, of all Lenders) and (ii) with respect to all Classes of Commitments and Loans of any Lender at any time, the numerator of which shall be the sum of such Lender’s Revolving Commitment (or, if such Revolving Commitment has been terminated or expired or the Loans have been declared to be due and payable, such Lender’s Revolving Credit Exposure) and Term Loan and the denominator of which shall be the sum of all Lenders’ Revolving Commitments (or, if such Revolving Commitments have been terminated or expired or the Loans have been declared to be due and payable, all Revolving Credit Exposure of all Lenders funded under such Commitments) and Term Loans.

**“Private MLP Common and Preferred Units”** shall mean common and preferred units, for which, the issuer of such MLP Units shall not have any class of units traded on a national stock exchange in the United States of America of a limited partnership or a limited liability company that has elected to be a partnership.

**“Public MLP Common and Preferred Units”** shall mean (i) common or preferred units, which are traded on a national stock exchange in a Publicly Traded Partnership, (ii) Equity Interests in the general partner interest, managing member interest or any other controlling interest in a Publicly Traded Partnership (**“GP Interest”**) that (x) derive the majority of their Value from the ownership of a GP Interest, associated incentive distribution rights and common or preferred units in a Publicly Traded Partnership and (y) are traded on a national stock exchange in the United States and (iii) investments in Enbridge Energy Management, Inc. (**“Enbridge”**), Kinder Morgan Management, LLC (**“Kinder”**) and similarly structured investments in form and substance satisfactory to the Administrative Agent in its sole discretion.

**“Publicly Traded Partnership”** means a limited liability company or a limited partnership that has at least one class of its Capital Stock traded on a national stock exchange in the United States of America.

**“Quotations”** shall mean (a) in the case of bank loans, the mean price as determined by one Approved Dealer selected by the Borrower and approved by the Administrative Agent in its sole discretion, (b) in the case of any Portfolio Investment traded on an exchange, the closing price for such Portfolio Investment most recently posted on such exchange, and (c) in the case of any other Portfolio Investment, the fair market value thereof as determined by an Approved Pricing Service.

**“Quoted Securities”** shall mean, without duplication, Cash, Cash Equivalents and Portfolio Investments for which Quotations are readily available.

**“Quoted Securities Borrowing Base”** shall mean that portion of the Borrowing Base attributable to Quoted Securities.

**“Recipient”** shall mean, as applicable, (a) the Administrative Agent and (b) any Lender.

**“Register”** has the meaning assigned to such term in clause (c) of Section 10.4.

**“Regulation D”** shall mean Regulation D of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

**“Regulation U”** shall mean Regulation U of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

**“Related Parties”** shall mean, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents, service providers and advisors of such Person and such Person’s Affiliates.

**“Release”** shall mean any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or within any building, structure, facility or fixture.

**“Required Lenders”** shall mean, at any time, Lenders holding more than 50% of the aggregate outstanding Revolving Commitments and Term Loans at such time or, if the Lenders have no Commitments outstanding, then Lenders holding more than 50% of the aggregate outstanding Revolving Credit Exposure and Term Loans of the Lenders at such time; provided, that to the extent that any Lender is a Defaulting Lender, such Defaulting Lender and all of its Revolving Commitments, Revolving Credit Exposure and Term Loans shall be excluded for purposes of determining Required Lenders; provided, further, that, in the case of any amendment to the Borrowing Base pursuant to Section 10.2(b)(vii) of this Agreement, the term “Required Lenders” shall mean Lenders holding more than 66<sup>2</sup>/<sub>3</sub>% of the aggregate outstanding Revolving Commitments and Term Loans at such time or, if the Lenders have no Commitments outstanding, then Lenders holding more than 66<sup>2</sup>/<sub>3</sub>% of the aggregate outstanding Revolving Credit Exposure and Term Loans of the Lenders at such time; provided, further, that at all times when six or more Lenders are party to this Agreement, the term “Required Lenders” shall in no event mean less than three Lenders.

**“Requirement of Law”** for any Person shall mean the articles or certificate of incorporation, bylaws, partnership certificate and agreement, or limited liability company certificate of organization and agreement, as the case may be, and other organizational and governing documents of such Person, and any law, treaty, rule or regulation, or determination of a Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject

**“Responsible Officer”** shall mean any of the president, the chief executive officer, the chief operating officer, the chief financial officer, the treasurer or a vice president of the Borrower or such other representative of the Borrower as may be designated in writing by any one of the foregoing with the consent of the Administrative Agent; and, with respect to the financial covenants only, the chief financial officer or the treasurer of the Borrower.

**“Restricted Payment”** shall mean, for any Person, any dividend or distribution on any class of its Capital Stock, or any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, retirement, defeasance or other acquisition of, any shares of its Capital Stock, any Indebtedness subordinated to the Obligations or any Guarantee thereof or any options, warrants, or other rights to purchase such Capital Stock or such Indebtedness, whether now or hereafter outstanding.

**“Revolving Commitment”** shall mean, with respect to each Lender, the obligation of such Lender to make Revolving Loans to the Borrower in an aggregate principal amount not exceeding the amount set forth with respect to such Lender on Schedule I, as such schedule may be amended pursuant to Section 2.20, or in the case of a Person becoming a Lender after the Closing Date, the amount of the assigned “Revolving Commitment” as provided in the Assignment and Acceptance executed by such Person as an assignee, or the joinder executed by such Person, in each case as such commitment may subsequently be increased or decreased pursuant to terms hereof.

**“Revolving Commitment Amount”** shall mean the aggregate principal amount of the Revolving Commitments from time to time. On the First Amendment Effective Date, the Revolving Commitment Amount is \$120,000,000.

**“Revolving Commitment Termination Date”** shall mean the earliest of (i) August 28, 2017, (ii) the date on which the Revolving Commitments are terminated pursuant to Section 2.7 and (iii) the date on which all amounts outstanding under this Agreement have been declared or have automatically become due and payable (whether by acceleration or otherwise).

**“Revolving Credit Exposure”** shall mean, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Revolving Loans.

**“Revolving Loan”** shall mean a loan made by the Lender to the Borrower under its Revolving Commitment, which may either be a Base Rate Loan or a Eurodollar Loan.

**“Right of First Offer”** shall mean any provision, term or condition which gives a Person the first option of buying or providing an offer with respect to a Security if the holder of such Security undertakes any action to sell, transfer or otherwise liquidate, or to market or offer for sale, or solicit offers to purchase such Security.

**“S&P”** shall mean Standard & Poor’s Financial Services LLC, a subsidiary of the McGraw Hill Companies.

**“Sanctioned Country”** shall mean a country or territory which is the target of economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the United States government, including those administered by the Office of Foreign Assets Control of the United States Department of the Treasury or the United States Department of State, or (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom.

**“Sanctioned Person”** shall mean (i) any Person listed in any economic or financial sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the United States Department of State, or the United Nations Security Council, the European Union or any European Union member state, or (ii) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a Person resident in, or organized under the laws of, a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC.

**“Sanctions”** means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the United States government, including those administered by the Office of Foreign Assets Control of the United States Department of the Treasury or the United States Department of State, or (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom.

**“Security Agreement”** shall mean that certain Amended and Restated Security Agreement, dated as of the Closing Date, by the Borrower and the Subsidiary Guarantors from time to time party thereto in favor of the Administrative Agent for the benefit of the Lenders, as amended, restated, supplemented or otherwise modified from time to time.

**“Security Documents”** shall mean, collectively, the Security Agreement, the Pledge Agreement, any other Control Agreement, the Perfection Certificate, and all other instruments and agreements now or hereafter securing the whole or any part of the Obligations or any Guarantee thereof, all UCC financing statements, fixture financing statements, stock powers, and all other documents, instruments, agreements and certificates executed and delivered by any Loan Party to the Administrative Agent and the Lenders in connection herewith.

**“Second Lien Bank Loan”** means a Bank Loan that is entitled to the benefit of a second lien and second priority perfected security interest on a substantial portion of the assets of the respective borrower and guarantors obligated in respect thereof.

“**Securities**” means common and Preferred Stock, units and participations, member interests in limited liability companies, partnership interests in partnerships, notes, bonds, debentures, trust receipts and other obligations, instruments or evidences of indebtedness, including debt instruments or public and private issuers and tax-exempt securities (including warrants, rights, put and call options and other options relating thereto, representing rights, or any combination thereof) and other property or interests commonly regarded as securities or any form of interest or participation therein, but not including Bank Loans.

“**Securities Act**” means the United States Securities Act of 1933, as amended.

“**Short-Term U.S. Government Securities**” means U.S. Government Securities maturing within one year of the applicable date of determination.

“**Solvent**” shall mean, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including subordinated and contingent liabilities, of such Person; (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts and liabilities, including subordinated and contingent liabilities as they become absolute and matured; (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature; and (d) such Person is not engaged in a business or transaction, and is not about to engage in a business or transaction, for which such Person’s property would constitute an unreasonably small capital. The amount of contingent liabilities (such as litigation, guaranties and pension plan liabilities) at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, represents the amount that would reasonably be expected to become an actual or matured liability.

“**Subsidiary**” shall mean, with respect to any Person (the “**parent**”), any corporation, partnership, joint venture, limited liability company, association or other entity 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 any other corporation, partnership, joint venture, limited liability company, association or other entity (i) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power, or in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (ii) that is, as of such date, otherwise controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless otherwise indicated, all references to “Subsidiary” hereunder shall mean a Subsidiary of the Borrower.

“**Subsidiary Guarantee Agreement**” shall mean any guaranty agreement, in the form of Exhibit B attached hereto or in any other form, in form and substance satisfactory to the Agent, executed from time to time by any Subsidiary in favor of the Administrative Agent and the Lenders, as amended, restated, supplemented or otherwise modified from time to time.

“**Subsidiary Guarantor**” shall mean any Subsidiary of Borrower that executes and delivers a Subsidiary Guarantee Agreement on the Closing Date or from time to time pursuant to Section 5.11.

“**Syndication Agent**” shall have the meaning assigned to such term in the opening paragraph hereof.

“**Synthetic Lease**” shall mean a lease transaction under which the parties intend that (i) the lease will be treated as an “operating lease” by the lessee pursuant to Statement of Financial Accounting Standards No. 13, as amended and (ii) the lessee will be entitled to various tax and other benefits ordinarily available to owners (as opposed to lessees) of like property.

“**Synthetic Lease Obligations**” shall mean, with respect to any Person, the sum of (i) all remaining rental obligations of such Person as lessee under Synthetic Leases which are attributable to principal and, without duplication, (ii) all rental and purchase price payment obligations of such Person under such Synthetic Leases assuming such Person exercises the option to purchase the lease property at the end of the lease term.

“**Swap Obligation**” means, with respect to any Subsidiary Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“**Tag Along Rights**” shall mean tag along, co-sale or other similar contractual rights that allow a holder of a Security to join in a proposed sale of Securities by another Person and sell all or any portion of the Securities held by such holder.

“**Taxes**” shall mean any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

“**Term Loan**” shall mean a term loan made by a Lender with a Term Loan Commitment to the Borrower pursuant to Section 2.4.

“**Term Loan Commitment**” shall mean, with respect to a Lender with a Term Loan Commitment, the obligation of such Lender to make a Term Loan hereunder on the First Amendment Effective Date, in a principal amount not exceeding the amount set forth with respect to such Lender on Schedule I. The aggregate principal amount of the Lenders’ Term Loan Commitments as of the First Amendment Effective Date is \$70,000,000.

“**Term Loan Maturity Date**” shall mean the earlier of (i) August 28, 2018 and (ii) the date on which the principal amount of the Term Loan has been declared or automatically has become due and payable (whether by acceleration or otherwise).

“**Total Leverage Asset Coverage Ratio**” shall mean as of any date, the ratio, determined, without duplication, in accordance with GAAP, of (i) the value of total assets of the Borrower and its Subsidiaries, less all liabilities (other than Indebtedness, including Indebtedness under the Loan Documents, Other Senior Secured Indebtedness and all obligations and liabilities to purchase, redeem, retire or otherwise acquire for value Preferred Stock of the Borrower and its Subsidiaries) of the Borrower and its Subsidiaries as of such date, to (ii) the aggregate amount of Indebtedness of the Borrower and its Subsidiaries (which, for the avoidance of doubt, shall include Other Senior Secured Indebtedness) and all obligations and liabilities to purchase, redeem, retire or otherwise acquire for value Preferred Stock of the Borrower and its Subsidiaries.

“**Type**”, when used in reference to a Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Base Rate.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of New York.

“**Unsecured Bank Loan**” shall mean a Bank Loan that is not secured by a lien or security interest.

“**U.S. Government Securities**” shall mean securities that are direct obligations of, and obligations the timely payment of principal and interest on which is fully guaranteed by, the United States or any agency or instrumentality of the United States the obligations of which are backed by the full faith and credit of the United States and in the form of conventional bills, bonds and notes.

“**Value**” means, with respect to any Portfolio Investment, the lower of the most recent internal fair market value as determined pursuant to Section 5.11(a)(ii)(C) and the most recent external fair market value as determined pursuant to Section 5.11(a)(ii)(A) and (B), but in each case subject to Section 5.11(c).

“**Warrant**” shall mean any rights, options or warrants to subscribe for or purchase or otherwise acquire common stock or convertible securities, whether or not the right to exercise such rights, options or warrants is immediately exercisable or is conditioned upon the passage of time, the occurrence or non-occurrence of some other event, or both.

“**Withdrawal Liability**” shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

**Section 1.2. Classifications of Loans and Borrowings.** For purposes of this Agreement, Loans and Borrowings may be classified and referred to by Class (e.g. a “Revolving Loan”, “Revolving Borrowing” or “Term Loan”), by Type (e.g. a “Eurodollar Loan”, “Base Rate Loan”, “Eurodollar Borrowing” or “Base Rate Borrowing”) or by Class and Type (e.g. a “Revolving Eurodollar Loan”, “Revolving Eurodollar Borrowing” or “Term Eurodollar Borrowing”).

**Section 1.3. Accounting Terms and Determination.** Unless otherwise defined or specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP as in effect from time to time, applied on a basis consistent with the most recent audited consolidated financial statement of the Borrower delivered pursuant to Section 5.1(a); provided, that if the Borrower notifies the Administrative Agent that the Borrower wishes to amend any covenant in Article VI to eliminate the effect of any change in GAAP on the operation of such covenant (or if the Administrative Agent notifies the Borrower that the Required Lenders wish to amend Article VI for such purpose), then the Borrower’s compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Borrower and the Required Lenders. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Loan Party or any Subsidiary of any Loan Party at “fair value”, as defined therein.

**Section 1.4. Terms Generally.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be

construed to have the same meaning and effect as the word “shall”. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the word “to” means “to but excluding”. Unless the context requires otherwise (i) 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 it was originally executed or as it may from time to time be amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person’s successors and permitted assigns, (iii) the words “hereof”, “herein” and “hereunder” and words of similar import shall be construed to refer to this Agreement as a whole and not to any particular provision hereof, (iv) all references to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles, Sections, Exhibits and Schedules to this Agreement and (v) all references to a specific time shall be construed to refer to the time in the city and state of the Administrative Agent’s principal office, unless otherwise indicated.

## ARTICLE II

### **AMOUNT AND TERMS OF THE COMMITMENTS**

**Section 2.1. General Description of Facilities.** Subject to and upon the terms and conditions herein set forth, (i) the Lenders hereby establish in favor of the Borrower a revolving credit facility pursuant to which each Lender severally agrees (to the extent of such Lender’s Commitment) to make Loans to the Borrower in accordance with Section 2.2 and Section 2.3; provided, that in no event shall the aggregate principal amount of all outstanding Loans exceed at any time the Revolving Commitment Amount from time to time in effect; and (ii) each Lender with a Term Loan Commitment severally agrees to make a Term Loan to the Borrower in a principal amount not exceeding such Lender’s Term Loan Commitment on the First Amendment Effective Date.

**Section 2.2. Revolving Loans.** Subject to the terms and conditions set forth herein, each Lender severally agrees to make Revolving Loans, ratably in proportion to its Pro Rata Share, to the Borrower, from time to time during the Availability Period, in an aggregate principal amount outstanding at any time that will not result in (a) such Lender’s Revolving Credit Exposure exceeding such Lender’s Revolving Commitment or (b) the aggregate Revolving Credit Exposures of all Lenders exceeding the Borrowing Limit; provided, however, that Revolving Loans made on the Closing Date or any of the three (3) Business Days following the Closing Date, may only consist of Base Rate Loans unless the Borrower delivers a funding indemnity letter, in form and substance acceptable to the Administrative Agent not less than three (3) Business Days prior to the Closing Date. During the Availability Period, the Borrower shall be entitled to borrow, prepay and reborrow Revolving Loans in accordance with the terms and conditions of this Agreement; provided, that the Borrower may not borrow or reborrow should there exist a Default or Event of Default.

**Section 2.3. Procedure for Revolving Borrowings.** The Borrower shall give the Administrative Agent written notice (or telephonic notice promptly confirmed in writing) of each Revolving Borrowing substantially in the form of Exhibit 2.3 (a “***Notice of Revolving Borrowing***”) (x) prior to 11:00 a.m. (New York time) on the date of each Base Rate Borrowing and (y) prior to 2:00 p.m. (New York time) three (3) Business Days prior to the requested date of each Eurodollar Borrowing. Each Notice of Revolving Borrowing shall be irrevocable and shall specify: (i) the aggregate principal amount of such Borrowing, (ii) the date of such Borrowing (which shall be a Business Day), (iii) the Class of such Loan comprising such Borrowing; (iv) the Type of such Revolving Loan comprising such Borrowing and (v) in the case of a Eurodollar Borrowing, the duration of the initial Interest Period applicable thereto (subject to the provisions of the definition of Interest Period). Each Revolving Borrowing shall consist entirely of Base Rate Loans or Eurodollar Loans, as the Borrower may request. The aggregate principal



amount of each Eurodollar Borrowing shall be not less than \$1,000,000 or a larger multiple of \$250,000, and the aggregate principal amount of each Base Rate Borrowing shall not be less than \$250,000 or a larger multiple of \$100,000; provided, that Base Rate Loans made pursuant to Section 2.4 may be made in lesser amounts as provided therein. At no time shall the total number of Eurodollar Borrowings outstanding at any time exceed six. Promptly following the receipt of a Notice of Revolving Borrowing in accordance herewith, the Administrative Agent shall advise each Lender of the details thereof and the amount of such Lender's Revolving Loan to be made as part of the requested Revolving Borrowing.

**Section 2.4. Term Loan Commitments.** Subject to the terms and conditions set forth herein, each Lender with a Term Loan Commitment agrees to make a single term loan to the Borrower on the First Amendment Effective Date in a principal amount equal to the Term Loan Commitment of such Lender. The Term Loan may be, at the option of the Borrower, a Base Rate Loan or a Eurodollar Loans or a combination thereof. The execution and delivery of the First Amendment by the Borrower and the satisfaction of all conditions precedent pursuant to the First Amendment shall be deemed to constitute the Borrower's request to borrow the Term Loans on the First Amendment Effective Date.

**Section 2.5. Funding of Borrowings.**

(a) Each Lender will make available each Loan to be made by it hereunder on the proposed date thereof by wire transfer in immediately available funds by 11:00 a.m. (New York time) for Eurodollar Borrowings and 2:00 p.m. (New York time) for Base Rate Borrowings to the Administrative Agent at the Payment Office. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts that it receives, in like funds by the close of business on such proposed date, to an account maintained by the Borrower with the Administrative Agent or at the Borrower's option, by effecting a wire transfer of such amounts to an account designated by the Borrower to the Administrative Agent.

(b) Unless the Administrative Agent shall have been notified by any Lender (i) for Eurodollar Borrowings, prior to 5:00 p.m. (New York time) one (1) Business Day prior to the date of such Eurodollar Borrowing in which such Lender is to participate, and (ii) for Base Rate Borrowings, promptly and in no event later than 2:00 p.m. (New York time) on the day of such Base Rate Borrowing in which such Lender is to participate that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date, and the Administrative Agent, in reliance on such assumption, may make available to the Borrower on such date a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender on the date of such Borrowing, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest at the Federal Funds Rate until the second Business Day after such demand and thereafter at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower, and the Borrower shall immediately pay such corresponding amount to the Administrative Agent together with interest at the rate specified for such Borrowing. Nothing in this subsection shall be deemed to relieve any Lender from its obligation to fund its Pro Rata Share of any Borrowing hereunder or to prejudice any rights which the Borrower may have against any Lender as a result of any default by such Lender hereunder.

(c) All Revolving Borrowings shall be made by the Lenders on the basis of their respective Pro Rata Shares. No Lender shall be responsible for any default by any other Lender in its obligations hereunder, and each Lender shall be obligated to make its Loans provided to be made by it hereunder, regardless of the failure of any other Lender to make its Loans hereunder.

## **Section 2.6. Interest Elections.**

(a) Each Borrowing initially shall be of the Type specified in the applicable Notice of Revolving Borrowing, and in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Notice of Revolving Borrowing. Thereafter, the Borrower may elect to convert such Borrowing into a different Type or to continue such Borrowing, and in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.6. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section 2.6, the Borrower shall give the Administrative Agent prior written notice (or telephonic notice promptly confirmed in writing) of each Borrowing substantially in the form of Exhibit 2.6(b) (a “*Notice of Conversion/Continuation*”) that is to be converted or continued, as the case may be, (x) prior to 11:00 a.m. (New York time) one (1) Business Day prior to the requested date of a conversion into a Base Rate Borrowing and (y) prior to 2:00 p.m. (New York time) three (3) Business Days prior to a continuation of or conversion into a Eurodollar Borrowing. Each such Notice of Conversion/Continuation shall be irrevocable and shall specify (i) the Borrowing to which such Notice of Continuation/Conversion applies and if different options are being elected with respect to different portions thereof, the portions thereof that are to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) shall be specified for each resulting Borrowing); (ii) the effective date of the election made pursuant to such Notice of Continuation/Conversion, which shall be a Business Day, (iii) whether the resulting Borrowing is to be a Base Rate Borrowing or a Eurodollar Borrowing; and (iv) if the resulting Borrowing is to be a Eurodollar Borrowing, the Interest Period applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of “Interest Period”. If any such Notice of Continuation/Conversion requests a Eurodollar Borrowing but does not specify an Interest Period, the Borrower shall be deemed to have selected an Interest Period of one month. The principal amount of any resulting Borrowing shall satisfy the minimum borrowing amount for Eurodollar Borrowings and Base Rate Borrowings set forth in Section 2.3.

(c) If, on the expiration of any Interest Period in respect of any Eurodollar Borrowing, the Borrower shall have failed to deliver a Notice of Conversion/Continuation, then, unless such Borrowing is repaid as provided herein, the Borrower shall be deemed to have elected to convert such Borrowing to a Base Rate Borrowing. No Borrowing may be converted into, or continued as, a Eurodollar Borrowing if a Default or an Event of Default exists, unless the Administrative Agent and each of the Lenders shall have otherwise consented in writing. No conversion of any Eurodollar Loans shall be permitted except on the last day of the Interest Period in respect thereof.

(d) Upon receipt of any Notice of Conversion/Continuation, the Administrative Agent shall promptly notify each Lender of the details thereof and of such Lender’s portion of each resulting Borrowing.

## **Section 2.7. Optional Reduction and Termination of Commitments.**

(a) Unless previously terminated, all Revolving Commitments shall terminate on the Revolving Commitment Termination Date.

(b) Upon at least three (3) Business Days’ prior written notice (or telephonic notice promptly confirmed in writing) to the Administrative Agent (which notice shall be irrevocable), the Borrower may reduce the Revolving Commitments in part or terminate the Revolving Commitments in

whole; provided, that any partial reduction shall apply to reduce proportionately and permanently the Revolving Commitment of each Lender, any partial reduction pursuant to this Section 2.7 shall be in an amount of at least \$1,000,000 and any larger multiple of \$250,000, and no such reduction shall be permitted which would reduce the Revolving Commitments to an amount less than the outstanding Revolving Credit Exposures of all Lenders.

(c) With the written approval of the Administrative Agent, the Borrower may terminate (on a non-ratable basis) the unused amount of the Revolving Commitment of a Defaulting Lender, and in such event the provisions of Section 2.22 will apply to all amounts thereafter paid by the Borrower for the account of any such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts), provided that such termination will not be deemed to be a waiver or release of any claim the Borrower, the Administrative Agent or any Lender may have against such Defaulting Lender.

### **Section 2.8. Repayment of Loans.**

(a) The outstanding principal amount of all Revolving Loans shall be due and payable (together with accrued and unpaid interest thereon) on the Revolving Commitment Termination Date.

(b) The Borrower unconditionally promises to pay to the Administrative Agent for the account of each Lender holding a Term Loan, the entire unpaid principal balance of the Term Loan on the Term Loan Maturity Date.

**Section 2.9. Evidence of Indebtedness.** (a) Each Lender shall maintain in accordance with its usual practice appropriate records evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable thereon and paid to such Lender from time to time under this Agreement. The Administrative Agent shall maintain appropriate records in which shall be recorded (i) the Revolving Commitment and the Term Loan Commitment of each Lender, (ii) the amount of each Loan made hereunder by each Lender, the Class and Type thereof and the Interest Period applicable thereto, (iii) the date of each continuation thereof pursuant to Section 2.6, (iv) the date of each conversion of all or a portion thereof to another Type pursuant to Section 2.6, (v) the date and amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder in respect of such Loans and (vi) both the date and amount of any sum received by the Administrative Agent hereunder from the Borrower in respect of the Loans and each Lender's Pro Rata Share thereof. The entries made in such records shall be *prima facie* evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, that the failure or delay of any Lender or the Administrative Agent in maintaining or making entries into any such record or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans (both principal and unpaid accrued interest) of such Lender in accordance with the terms of this Agreement.

(b) This Agreement evidences the obligation of the Borrower to repay the Loans and is being executed as a "noteless" credit agreement. However, at the request of any Lender at any time, the Borrower agrees that it will prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns and in a form approved by the Administrative Agent and reasonably acceptable to the Borrower. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment permitted hereunder) be represented by one or more promissory notes in such form payable to the payee named therein and its registered assigns.

## **Section 2.10. Prepayments**

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, without premium or penalty, by giving irrevocable written notice (or telephonic notice promptly confirmed in writing) to the Administrative Agent no later than (i) in the case of prepayment of any Eurodollar Borrowing, 2:00 p.m. (New York time) not less than three (3) Business Days prior to any such prepayment, or (ii) in the case of any prepayment of any Base Rate Borrowing, 11:00 a.m. on the same day of such prepayment. Each such notice shall be irrevocable and shall specify the proposed date of such prepayment and the principal amount of each Borrowing or portion thereof to be prepaid. Upon receipt of any such notice, the Administrative Agent shall promptly notify each affected Lender of the contents thereof and of such Lender's Pro Rata Share of any such prepayment. If such notice is given, the aggregate amount specified in such notice shall be due and payable on the date designated in such notice, together with accrued interest to such date on the amount so prepaid in accordance with Section 2.11(d); provided, that if a Eurodollar Borrowing is prepaid on a date other than the last day of an Interest Period applicable thereto, the Borrower shall also pay all amounts required pursuant to Section 2.17. Each partial prepayment of any Loan shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type pursuant to Section 2.2. Each prepayment of a Borrowing shall be applied ratably to the Loans comprising such Borrowing.

(b) If at any time the Revolving Credit Exposure of all Lenders exceeds the Revolving Commitment Amount, as reduced pursuant to Section 2.7 or otherwise, the Borrower shall immediately repay Revolving Loans in an amount equal to such excess, together with all accrued and unpaid interest on such excess amount and any amounts due under Section 2.17. Each prepayment shall be applied first to the Base Rate Loans to the full extent thereof, and second to Eurodollar Loans to the full extent thereof.

(c) In the event that at any time any Borrowing Base Deficiency shall exist, the Borrower shall prepay any of the Revolving Loans, the Term Loans or the Other Senior Secured Indebtedness in such amounts as shall be necessary so that such Borrowing Base Deficiency is cured within five (5) Business Days after the occurrence thereof.

(d) In the event that at any time the Borrower or any of its Subsidiaries shall change or modify in any material respect the Investment Objectives without the consent of the Required Lenders, the Borrower shall prepay the Loans then outstanding in full, together with accrued interest thereon and all fees and other Obligations of the Borrower accrued hereunder.

## **Section 2.11. Interest on Loans**

(a) The Borrower shall pay interest on each Base Rate Loan at the Base Rate in effect from time to time and on each Eurodollar Loan at the Adjusted LIBO Rate for the applicable Interest Period in effect for such Loan, *plus*, in each case, the Applicable Margin in effect from time to time.

(b) While an Event of Default exists or after acceleration, at the option of the Required Lenders, the Borrower shall pay interest ("**Default Interest**") with respect to all Eurodollar Loans at the rate otherwise applicable for the then-current Interest Period *plus* an additional 2% per annum until the last day of such Interest Period, and thereafter, and with respect to all Base Rate Loans and all other Obligations hereunder (other than Loans), at the rate in effect for Base Rate Loans, *plus* an additional 2% per annum.

(c) Interest on the principal amount of all Loans shall accrue from and including the date such Loans are made to but excluding the date of any repayment thereof. Interest on all outstanding Base Rate Loans shall be payable quarterly in arrears on the last day of each March, June, September and December and on the Revolving Commitment Termination Date (with respect to Revolving Loans) or the Term Loan Maturity Date (with respect to Term Loans). Interest on all outstanding Eurodollar Loans shall be payable on the last day of each Interest Period applicable thereto, and, in the case of any Eurodollar Loans having an Interest Period in excess of three months or 90 days, respectively, on each day which occurs every three months or 90 days, as the case may be, after the initial date of such Interest Period, and on the Revolving Commitment Termination Date (with respect to Revolving Loans) or the Term Loan Maturity Date (with respect to Term Loans). Interest on any Loan which is converted into a Loan of another Type or which is repaid or prepaid shall be payable on the date of such conversion or on the date of any such repayment or prepayment (on the amount repaid or prepaid) thereof. All Default Interest shall be payable on demand.

(d) The Administrative Agent shall determine each interest rate applicable to the Loans hereunder and shall promptly notify the Borrower and the Lenders of such rate in writing (or by telephone, promptly confirmed in writing). Any such determination shall be conclusive and binding for all purposes, absent manifest error.

#### **Section 2.12. Fees.**

(a) The Borrower shall pay to the Administrative Agent for its own account fees in the amounts and at the times previously agreed upon by the Borrower and the Administrative Agent.

(b) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at the Applicable Percentage per annum on the daily amount of the unused Revolving Commitment of such Lender during the Availability Period. For purposes of computing commitment fees with respect to the Revolving Commitments, the Revolving Commitment of each Lender shall be deemed used to the extent of the outstanding Revolving Loans of such Lender.

(c) Commencing on the First Amendment Effective Date, the Borrower shall pay to the Administrative Agent for its own account fees in the amounts and at the times previously agreed upon in writing by the Borrower and the Administrative Agent.

(d) Accrued fees (other than the fees referenced in paragraph (a) and (c)) shall be payable quarterly in arrears on the last day of each March, June, September and December, commencing on September 30, 2014 and on the Revolving Commitment Termination Date (and if later, the date the Loans shall be repaid in their entirety); provided further, that any such fees accruing after the Revolving Commitment Termination Date shall be payable on demand.

(e) Notwithstanding anything herein to the contrary, during such period as a Lender is a Defaulting Lender, such Defaulting Lender will not be entitled to commitment fees accruing with respect to its Revolving Commitment during such period pursuant to Section 2.12(b) (without prejudice to the rights of the Lenders other than Defaulting Lenders in respect of such fees).

#### **Section 2.13. Computation of Interest and Fees.**

All computations of interest and fees hereunder shall be made on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or fees are payable (to the extent computed on the basis of days elapsed).

Each determination by the Administrative Agent of an interest amount or fee hereunder shall be made in good faith and, except for manifest error, shall be final, conclusive and binding for all purposes.

**Section 2.14. Inability to Determine Interest Rates.** If prior to the commencement of any Interest Period for any Eurodollar Borrowing,

(i) the Administrative Agent shall have determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant interbank market, adequate means do not exist for ascertaining the Adjusted LIBO Rate for such Interest Period, or

(ii) the Administrative Agent shall have received notice from the Required Lenders that the Adjusted LIBO Rate does not adequately and fairly reflect the cost to such Lenders (or Lender, as the case may be) of making, funding or maintaining their (or its, as the case may be) Eurodollar Loans for such Interest Period,

the Administrative Agent shall give written notice (or telephonic notice, promptly confirmed in writing) to the Borrower and to the Lenders as soon as practicable thereafter. Until the Administrative Agent shall notify the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) the obligations of the Lenders to make Eurodollar Revolving Loans or to continue or convert outstanding Loans as or into Eurodollar Loans shall be suspended and (ii) all such affected Loans shall be converted into Base Rate Loans on the last day of the then current Interest Period applicable thereto unless the Borrower prepays such Loans in accordance with this Agreement. Unless the Borrower notifies the Administrative Agent at least one Business Day before the date of any Eurodollar Borrowing for which a Notice of Revolving Borrowing has previously been given that it elects not to borrow on such date, then such Revolving Borrowing shall be made as a Base Rate Borrowing.

**Section 2.15. Illegality.** If any Change in Law shall make it unlawful or impossible for any Lender to make, maintain or fund any Eurodollar Loan and such Lender shall so notify the Administrative Agent, the Administrative Agent shall promptly give notice thereof to the Borrower and the other Lenders, whereupon until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such suspension no longer exist, the obligation of such Lender to make Eurodollar Revolving Loans, or to continue or convert outstanding Loans as or into Eurodollar Loans, shall be suspended. In the case of the making of a Eurodollar Borrowing, such Lender's Revolving Loan shall be made as a Base Rate Loan as part of the same Revolving Borrowing for the same Interest Period and if the affected Eurodollar Loan is then outstanding, such Loan shall be converted to a Base Rate Loan either (i) on the last day of the then current Interest Period applicable to such Eurodollar Loan if such Lender may lawfully continue to maintain such Loan to such date or (ii) immediately if such Lender shall determine that it may not lawfully continue to maintain such Eurodollar Loan to such date. Notwithstanding the foregoing, the affected Lender shall, prior to giving such notice to the Administrative Agent, designate a different Applicable Lending Office if such designation would avoid the need for giving such notice and if such designation would not otherwise be disadvantageous to such Lender in the good faith exercise of its discretion.

**Section 2.16. Increased Costs.**

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement that is not otherwise included in the determination of the Adjusted LIBO Rate

hereunder against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate);

(ii) impose on any Lender or the eurodollar interbank market any other condition affecting this Agreement or any Eurodollar Loans made by such Lender or any participation therein; or

(iii) subject any Recipient to any Taxes (other than Indemnified Taxes and Excluded Taxes) on its loans, loan principal, letters of credit, commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing is to increase the cost to such Lender of making, converting into, continuing or maintaining a Eurodollar Loan or to reduce the amount received or receivable by such Lender (whether of principal, interest or any other amount), then, from time to time, such Lender may provide the Borrower (with a copy thereof to the Administrative Agent) with written notice and demand with respect to such increased costs or reduced amounts, and within five (5) Business Days after receipt of such notice and demand the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for any such increased costs incurred or reduction suffered.

(b) If any Lender shall have determined that on or after the date of this Agreement 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 Parent Company) as a consequence of its obligations hereunder to a level below that which such Lender or such Lender's Parent Company could have achieved but for such Change in Law (taking into consideration such Lender's policies or the policies of such Lender's Parent Company with respect to capital adequacy) then, from time to time, within five (5) Business Days after receipt by the Borrower of written demand by such Lender (with a copy thereof to the Administrative Agent), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender or such Lender's Parent Company for any such reduction suffered.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or such Lender's Parent Company, as the case may be, specified in paragraph (a) or (b) of this Section 2.16 shall be delivered to the Borrower (with a copy to the Administrative Agent) and shall be conclusive, absent manifest error. The Borrower shall pay any such Lender, as the case may be, such amount or amounts within five (5) Business Days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.16 shall not constitute a waiver of such Lender's right to demand such compensation.

**Section 2.17. Funding Indemnity.** In the event of (a) the payment of any principal of a Eurodollar Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion or continuation of a Eurodollar Loan other than on the last day of the Interest Period applicable thereto, or (c) the failure by the Borrower to borrow, prepay, convert or continue any Eurodollar Loan on the date specified in any applicable notice (regardless of whether such notice is withdrawn or revoked), then, in any such event, the Borrower shall compensate each Lender, within five (5) Business Days after written demand from such Lender, for any loss, cost or expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense shall be deemed to include an amount determined by such Lender to be the excess, if any, of (A) the amount of interest that would have accrued on the principal amount of such Eurodollar Loan if such event had not occurred at the Adjusted LIBO Rate applicable to such Eurodollar Loan for the period from the date of such event to the last day of the then current Interest Period therefor (or in the case of a failure to borrow, convert or

continue, for the period that would have been the Interest Period for such Eurodollar Loan) over (B) the amount of interest that would accrue on the principal amount of such Eurodollar Loan for the same period if the Adjusted LIBO Rate were set on the date such Eurodollar Loan was prepaid or converted or the date on which the Borrower failed to borrow, convert or continue such Eurodollar Loan. A certificate as to any additional amount payable under this Section 2.17 submitted to the Borrower by any Lender (with a copy to the Administrative Agent) shall be conclusive, absent manifest error.

### **Section 2.18. Taxes.**

(a) For purposes of this Section 2.18, the term “applicable law” includes FATCA. Any and all payments by or on account of any obligation of the Borrower hereunder shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided, that if the Borrower shall be required to deduct any Taxes from such payments, then (i) if such Tax is an Indemnified Tax, 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 2.18) the applicable Recipient shall receive an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Borrower shall indemnify the Administrative Agent and each Lender, within five (5) Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent or such Lender 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 Section 2.18) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Without limiting the generality of the foregoing, each Lender shall deliver the applicable form(s) described in clauses (i) and (ii) below on or before the date such Lender becomes a party to this Agreement (or in the case of a Participant, on or before the date such Participant purchases the related participation). In addition, each such Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously



delivered by such Lender. Each such Lender shall promptly notify the Borrower and the Administrative Agent at any time that it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the Internal Revenue Service for such purpose).

(i) Any Lender that is a United States person under Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(ii) Any Foreign Lender shall deliver to the Administrative Agent and the Borrower (or in the case of a Participant, to the Lender from which the related participation shall have been purchased), as appropriate, two (2) duly completed copies of (i) Internal Revenue Service Form W-8 ECI, or any successor form thereto, certifying that the payments received from the Borrower hereunder are effectively connected with such Foreign Lender's conduct of a trade or business in the United States; or (ii) Internal Revenue Service Form W-8 BEN, or any successor form thereto, certifying that such Foreign Lender is entitled to benefits under an income tax treaty to which the United States is a party which reduces the rate of withholding tax on payments of interest; or (iii) Internal Revenue Service Form W-8 BEN, or any successor form prescribed by the Internal Revenue Service, together with a certificate (A) establishing that the payment to the Foreign Lender qualifies as "portfolio interest" exempt from U.S. withholding tax under Code section 871(h) or 881(c), and (B) stating that (1) the Foreign Lender is not a bank for purposes of Code section 881(c)(3)(A), or the obligation of the Borrower hereunder is not, with respect to such Foreign Lender, a loan agreement entered into in the ordinary course of its trade or business, within the meaning of that Section; (2) the Foreign Lender is not a 10% shareholder of the Borrower within the meaning of Code section 871(h)(3) or 881(c)(3)(B); and (3) the Foreign Lender is not a controlled foreign corporation that is related to the Borrower within the meaning of Code section 881(c)(3)(C); or (iv) such other Internal Revenue Service forms as may be applicable to the Foreign Lender, including Forms W-8 IMY or W-8 EXP.

(f) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail 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 Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative 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 Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

### **Section 2.19. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.**

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees, or of amounts payable under Section 2.16, 2.17 or 2.18, or otherwise) prior to 12:00 noon (New York time), on the date when due, in immediately available funds, free and clear of any defenses, rights of set-off, counterclaim or withholding or deduction of taxes, except as otherwise required under Section 2.18. 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 the Payment Office, except that payments pursuant to Sections 2.16, 2.17 and 2.18 and 10.3 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 made payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) 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: first, to Administrative Agent's fees and reimbursable expenses then due and payable pursuant to any of the Loan Documents; second, to all reimbursable expenses of the Lenders then due and payable pursuant to any of the Loan Documents, pro rata to the Lenders based on their respective pro rata shares of such fees and expenses; and third, to interest and fees then due and payable hereunder, pro rata to the Lenders based on their respective pro rata shares of such interest and fees; and fourth, to the payment of principal of the Loans then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) 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 that would result 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 paragraph 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 Affiliate thereof (as to which the provisions of this paragraph 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.

(d) 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 hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount or amounts due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders 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 greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) Notwithstanding anything herein to the contrary, any amount paid by the Borrower for the account of a Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity payments or other amounts) will be retained by the Administrative Agent in a segregated non-interest bearing account until the termination of the Revolving Commitments at which

time the funds in such account will be applied by the Administrative Agent, to the fullest extent permitted by law, in the following order of priority: first to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent under this Agreement, second to the payment of post-default interest and then current interest due and payable to the Lenders hereunder other than Defaulting Lenders, ratably among them in accordance with the amounts of such interest then due and payable to them, third to the payment of fees then due and payable to the Non-Defaulting Lenders hereunder, ratably among them in accordance with the amounts of such fees then due and payable to them, fourth to pay principal then due and payable to the Non-Defaulting Lenders hereunder ratably in accordance with the amounts thereof then due and payable to them, fifth to the ratable payment of other amounts then due and payable to the Non-Defaulting Lenders, and sixth to pay amounts owing under this Agreement to such Defaulting Lender or as a court of competent jurisdiction may otherwise direct; provided, however, that, notwithstanding the foregoing, in the event that the Obligations are accelerated and the Administrative Agent receives proceeds from realization upon the Collateral, such Defaulting Lender shall be able to receive payments on a pro rata basis with the Non-Defaulting Lenders as provided for in clauses "third" and "fourth" above.

### **Section 2.20. Increase of Commitments; Additional Lenders.**

(a) So long as no Event of Default has occurred and is continuing, from time to time after the Closing Date, the Borrower may, upon at least 30 days' written notice to the Administrative Agent (who shall promptly provide a copy of such notice to each Lender), propose to increase the Revolving Commitments to an amount not to exceed \$150,000,000 (the amount of any such increase, the "***Additional Commitment Amount***"). Each Lender shall have the right for a period of 15 days following receipt of such notice, to elect by written notice to the Borrower and the Administrative Agent to increase its Revolving Commitment by a principal amount equal to its Pro Rata Share of the Additional Commitment Amount. No Lender (or any successor thereto) shall have any obligation to increase its Revolving Commitment or its other obligations under this Agreement and the other Loan Documents, and any decision by a Lender to increase its Revolving Commitment shall be made in its sole discretion independently from any other Lender.

(b) If any Lender shall not elect to increase its Revolving Commitment pursuant to subsection (a) of this Section 2.21, the Borrower may designate another bank or other financial institution (which may be, but need not be, one or more of the existing Lenders) which at the time agrees to, in the case of any such Person that is an existing Lender, increase its Revolving Commitment and in the case of any other such Person (an "***Additional Lender***"), become a party to this Agreement; provided, however, that any new bank or financial institution must be reasonably acceptable to the Administrative Agent, which acceptance will not be unreasonably withheld or delayed. The sum of the increases in the Revolving Commitments of the existing Lenders pursuant to this subsection (b) plus the Revolving Commitments of the Additional Lenders shall not in the aggregate exceed the unsubscribed amount of the Additional Commitment Amount.

(c) An increase in the aggregate amount of the Revolving Commitments pursuant to this Section 2.21 shall become effective upon the receipt by the Administrative Agent of an supplement or joinder in form and substance satisfactory to the Administrative Agent executed by the Borrower, by each Additional Lender and by each other Lender whose Revolving Commitment is to be increased, setting forth the new Revolving Commitments of such Lenders and setting forth the agreement of each Additional Lender to become a party to this Agreement and to be bound by all the terms and provisions hereof, together with promissory notes evidencing such increase in the Revolving Commitments, and such evidence of appropriate corporate authorization on the part of the Borrower with respect to the increase in the Revolving Commitments and such opinions of counsel for the Borrower with respect to the increase in the Revolving Commitments as the Administrative Agent may reasonably request.

(d) Upon the acceptance of any such supplement or joinder by the Administrative Agent, the Revolving Commitment Amount shall automatically be increased by the amount of the Revolving Commitments added through such supplement or joinder and Schedule I shall automatically be deemed amended to reflect the Revolving Commitments of all Lenders after giving effect to the addition of such Revolving Commitments.

(e) Upon any increase in the aggregate amount of the Revolving Commitments pursuant to this Section 2.20 that is not pro rata among all Lenders, within five Business Days, in the case of any Base Rate Loans then outstanding, and at the end of the then current Interest Period with respect thereto, in the case of any Eurodollar Loans then outstanding, the Borrower shall prepay such Loans in their entirety and, to the extent the Borrower elects to do so and subject to the conditions specified in Article III, the Borrower shall reborrow Loans from the Lenders in proportion to their respective Revolving Commitments after giving effect to such increase, until such time as all outstanding Loans are held by the Lenders in proportion to their respective Commitments after giving effect to such increase.

**Section 2.21. Mitigation of Obligations.** If any Lender requests compensation under Section 2.16, 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 2.18, 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 sole judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable under Section 2.16 or Section 2.18, 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 costs and expenses incurred by any Lender in connection with such designation or assignment.

**Section 2.22. Replacement of Lenders.** If any Lender requests compensation under Section 2.16, 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 2.18, or if any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions set forth in Section 10.4(b)) all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender); provided, that (i) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal amount of all Loans owed to it, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (in the case of such outstanding principal and accrued interest) and from the Borrower (in the case of all other amounts), (iii) in the case of a claim for compensation under Section 2.16 or payments required to be made pursuant to Section 2.18, such assignment will result in a reduction in such compensation or payments and (iv) such assignment does not conflict with applicable Requirements of Law. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

**Section 2.23. Reallocation and Cash Collateralization of Defaulting Lender or Potential Defaulting Lender Commitment.**

(a) Reserved.

(b) If the Borrower and the Administrative Agent agree in writing in their discretion that a Lender that is a Defaulting Lender or a Potential Defaulting Lender should no longer be deemed to be a Defaulting Lender or Potential Defaulting Lender, as the case may be, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, such Lender will purchase at par such portion of outstanding Revolving Loans of the other Lenders and/or make such other adjustments as the Administrative Agent may determine to be necessary to cause the Revolving Credit Exposure of the Lenders to be on a pro rata basis in accordance with their respective Revolving Commitments, whereupon such Lender will cease to be a Defaulting Lender or Potential Defaulting Lender and will be a Non-Defaulting Lender (and such Revolving Credit Exposure of each Lender will automatically be adjusted on a prospective basis to reflect the foregoing) and if any cash collateral has been posted with respect to such Defaulting Lender or Potential Defaulting Lender, the Administrative Agent will promptly return such cash collateral to the Borrower; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender or Potential Defaulting Lender to Non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender or Potential Defaulting Lender.

### ARTICLE III

#### CONDITIONS PRECEDENT TO LOANS

**Section 3.1. Conditions To Effectiveness.** The amendment and restatement of the Existing Credit Agreement as provided herein, 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 10.2). The Administrative Agent and the Borrower shall execute a notice confirming the satisfaction of such conditions and the occurrence of the Closing Date.

(a) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Closing Date, including reimbursement or payment of all out-of-pocket expenses (including reasonable fees, charges and disbursements of counsel to the Administrative Agent) required to be reimbursed or paid by the Borrower hereunder, under any other Loan Document and under any agreement with the Administrative Agent or SunTrust Robinson Humphrey, Inc., as Arranger.

(b) Reserved.

(c) The Administrative Agent (or its counsel) shall have received the following:

(i) a counterpart of this Agreement signed by or on behalf of each party hereto or written evidence satisfactory to the Administrative Agent (which may include facsimile transmission, or .PDF copy sent by e-mail, of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement;

(ii) duly executed originals of each Control Agreement with respect to all Collateral Accounts, Clearing Accounts, deposit accounts, securities, securities entitlements, other financial assets held with any financial institution other than Administrative Agent or its affiliates (other than the Approved Brokerage Accounts);

(iii) the duly executed Security Agreement, together with (A) UCC financing statements and other applicable documents under the laws of the jurisdictions with respect to the

perfection of the Liens granted under the Security Agreement, as requested by the Administrative Agent in order to perfect such Liens, (B) copies of favorable UCC, tax, judgment and fixture lien search reports in all necessary or appropriate jurisdictions and under all legal and trade names of the Borrower and the Subsidiary Guarantors requested by the Lenders, indicating that there are no prior Liens on any of the Collateral other than Permitted Encumbrances, and (C) a Perfection Certificate duly completed and executed by the Borrower;

(iv) reserved;

(v) a certificate of the Secretary or Assistant Secretary of each Loan Party in the form of Exhibit 3.1(c)(v), attaching and certifying copies of its bylaws and of the resolutions of its board of directors, or partnership agreement or limited liability company agreement, or comparable organizational documents and authorizations, authorizing the execution, delivery and performance of the Loan Documents to which it is a party and certifying the name, title and true signature of each officer of such Loan Party executing the Loan Documents to which it is a party;

(vi) certified copies of the articles or certificate of incorporation, certificate of organization or limited partnership, or other registered organizational documents of each Loan Party, together with certificates of good standing or existence, as may be available from the Secretary of State of the jurisdiction of organization of such Loan Party and each other jurisdiction where such Loan Party is required to be qualified to do business as a foreign corporation;

(vii) a favorable written opinion of Paul Hastings LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each of the Lenders, and covering such matters relating to the Loan Parties, the Loan Documents and the transactions contemplated therein as the Administrative Agent or the Required Lenders shall reasonably request;

(viii) a certificate in the form of Exhibit 3.1(c)(viii), dated the Closing Date and signed by a Responsible Officer, certifying that (x) no Default or Event of Default exists, (y) all representations and warranties of each Loan Party set forth in the Loan Documents are true and correct and (z) since the date of the financial statements of the Borrower described in Section 4.4, there shall have been no change which has had or could reasonably be expected to have a Material Adverse Effect;

(ix) a duly executed Notice of Revolving Borrowing;

(x) a duly executed Federal Reserve Form U-1, executed by the Borrower and the Administrative Agent on behalf of each Lender;

(xi) a duly executed funds disbursement agreement, together with a report setting forth the sources and uses of the proceeds hereof;

(xii) a duly completed and executed certificate of the type described in Section 5.1(c) including calculations of the financial covenants set forth in Article VI hereof as of November 30, 2013;

(xiii) certified copies of all consents, approvals, authorizations, registrations and filings and orders required or advisable to be made or obtained under any Requirement of Law, or by any Contractual Obligation of each Loan Party, in connection with the execution, delivery, performance, validity and enforceability of the Loan Documents or any of the transactions

contemplated thereby, and such consents, approvals, authorizations, registrations, filings and orders shall be in full force and effect and all applicable waiting periods shall have expired, and no investigation or inquiry by any governmental authority regarding the Commitments or any transaction being financed with the proceeds thereof shall be ongoing;

(xiv) receipt and satisfactory review by the Administrative Agent of unaudited financial statements of Borrower for the period ending August 31, 2013;

(xv) a duly completed and executed Borrowing Base Certificate as of two days prior to the Closing Date;

(xvi) certified copies of all agreements, indentures or notes governing the terms of any Material Indebtedness and all other material agreements, documents and instruments to which any Loan Party is a party or by which any of its assets are bound;

(xvii) certificates of insurance, in form and detail acceptable to the Administrative Agent, describing the types and amounts of insurance (property and liability) covering any of the tangible insurable Collateral maintained by the Loan Parties, in each case naming the Administrative Agent as additional insured and loss payee, as appropriate;

(xviii) the Administrative Agent shall have reviewed and be satisfied with the Borrower's compliance with underwriting policies for the Fiscal Quarter ended November 30, 2013 and prior to the Closing Date and shall have completed a satisfactory review of third party valuation reports prepared on behalf of the Borrower for the Fiscal Quarter ended November 30, 2013; and

(xix) the Administrative Agent shall have reviewed and approved, in its reasonable discretion, the valuations for all Private MLP Common and Preferred Units.

Without limiting the generality of the provisions of Section 3.1, for purposes of determining compliance with the conditions specified in this Section 3.1, each Lender that has signed this Credit Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder 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 proposed Closing Date specifying its objection thereto.

**Section 3.2. Each Credit Event.** The obligation of each Lender to make a Loan on the occasion of any Borrowing is subject to the satisfaction of the following conditions:

(a) at the time of and immediately after giving effect to such Borrowing, no Default or Event of Default shall exist;

(b) at the time of and immediately after giving effect to such Borrowing, all representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct in all material respects on and as of the date of such Borrowing (provided that if any representation or warranty is by its terms qualified by concepts of materiality or a Material Adverse Effect, such representation and warranty shall be true and correct in all respects), in each case before and after giving effect thereto;

(c) the Borrower shall have delivered the required Notice of Revolving Borrowing;

(d) the Borrower shall have delivered a duly executed update or amendment to the Federal Reserve Form U-1 delivered on the Closing Date, executed by the Borrower and the Administrative Agent on behalf of each Lender; and

(e) the Administrative Agent shall have received such other documents, certificates, information or legal opinions as the Administrative Agent or the Required Lenders may reasonably request, all in form and substance reasonably satisfactory to the Administrative Agent or the Required Lenders.

Each Borrowing shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a), (b) and (c) of this Section 3.2.

**Section 3.3. Delivery of Documents.** All of the Loan Documents, certificates, legal opinions and other documents and papers referred to in this Article III, unless otherwise specified, shall be delivered to the Administrative Agent for the account of each of the Lenders and, except for any promissory notes issued hereunder, in sufficient counterparts or copies for each of the Lenders and shall be in form and substance satisfactory in all respects to the Administrative Agent.

#### ARTICLE IV

#### **REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants to the Administrative Agent and each Lender as follows:

**Section 4.1. Existence; Power.** Each of the Borrower and each of its Subsidiaries (i) is duly organized, validly existing and in good standing as a corporation, partnership or limited liability company under the laws of the jurisdiction of its organization, (ii) has all requisite power and authority to carry on its business as now conducted, and (iii) is duly qualified to do business, and is in good standing, in each jurisdiction where such qualification is required, except where a failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect.

**Section 4.2. Organizational Power; Authorization.** The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party are within such Loan Party's organizational powers and have been duly authorized by all necessary organizational, and if required, shareholder, partner or member, action. This Agreement has been duly executed and delivered by the Borrower, and constitutes, and each other Loan Document to which any Loan Party is a party, when executed and delivered by such Loan Party, will constitute, valid and binding obligations of the Borrower or such Loan Party (as the case may be), enforceable against it in accordance with their respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

**Section 4.3. Governmental Approvals; No Conflicts.** The execution, delivery and performance by each Loan Party of this Agreement and of the other Loan Documents to which it is a party (a) do not require any consent or approval of, registration or filing with, or any action by, any Governmental Authority, except those as have been obtained or made and are in full force and effect, (b) will not violate any Requirements of Law applicable to any Loan Party or any of its Subsidiaries or any judgment, order or ruling of any Governmental Authority, (c) will not violate or result in a default under any indenture, material agreement or other material instrument binding on any Loan Party, any of its Subsidiaries or any of their respective assets or give rise to a right thereunder to require any payment to



be made by any Loan Party or any of its Subsidiaries and (d) will not result in the creation or imposition of any Lien on any asset of any Loan Party or any of its Subsidiaries, except Liens (if any) created under the Loan Documents.

**Section 4.4. Financial Statements.** The Borrower has furnished to each Lender the audited consolidated balance sheet of the Borrower and its Subsidiaries as of November 30, 2013 and the related consolidated statements of income, shareholders' equity and cash flows for the Fiscal Year then ended audited by PricewaterhouseCoopers LLP. Such financial statements fairly present the consolidated financial condition of the Borrower and its Subsidiaries as of such dates and the consolidated results of operations for such periods in conformity with GAAP consistently applied, subject to year end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii). Since November 30, 2013, there have been no changes with respect to the Borrower and its Subsidiaries which have had or could reasonably be expected to have, singly or in the aggregate, a Material Adverse Effect.

**Section 4.5. Litigation and Environmental Matters.**

(a) No litigation, investigation or proceeding of or before any arbitrators or Governmental Authorities is pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect or (ii) which in any manner draws into question the validity or enforceability of this Agreement or any other Loan Document.

(b) Except for the matters set forth on Schedule 4.5, neither the Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

**Section 4.6. Compliance with Laws and Agreements.** Each of the Borrower and each of its Subsidiaries is in compliance with (a) all Requirements of Law and all judgments, decrees and orders of any Governmental Authority applicable to each of them and (b) all indentures, agreements or other instruments binding upon it or its properties, except where non-compliance, either singly or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**Section 4.7. Investment Company Act, Etc.** The Borrower is registered with the Securities and Exchange Commission as an "investment company" as defined under the Investment Company Act, is classified as a "closed-end company" under Section 5 of the Investment Company Act, and is subject to regulation as such thereunder.

**Section 4.8. Taxes.** The Borrower and its Subsidiaries and each other Person for whose taxes the Borrower or any Subsidiary could become liable have timely filed or caused to be filed all Federal income tax returns and all other material tax returns that are required to be filed by them, and have paid all taxes shown to be due and payable on such returns or on any assessments made against it or its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, except where the same are currently being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as the case may be, has set aside on its books adequate reserves in accordance with GAAP. The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of such taxes are adequate, and no tax liabilities that could be materially in excess of the amount so provided are anticipated.

**Section 4.9. Margin Regulations.** None of the proceeds of any of the Loans will be used, directly or indirectly, for any purpose that violates the provisions of Regulation U of the Board of Governors of the Federal Reserve System. Neither the Borrower nor its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying “margin stock”.

**Section 4.10. Investment Objectives.** The Borrower and its Subsidiaries is in compliance with all Investment Objectives except to the extent that the failure to so comply could not reasonably be expected to result in a Material Adverse Effect.

**Section 4.11. ERISA.** No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans.

**Section 4.12. Ownership of Property.**

(a) Each of the Borrower and its Subsidiaries has good title to, or valid leasehold interests in, all of its real and personal property material to the operation of its business, including all such properties reflected in the most recent audited consolidated balance sheet of the Borrower referred to in Section 4.4 or purported to have been acquired by the Borrower or any Subsidiary after said date (except as sold or otherwise disposed of in the ordinary course of business or otherwise in accordance with Section 7.5 of this Agreement), in each case free and clear of Liens prohibited by this Agreement. All leases that individually or in the aggregate are material to the business or operations of the Borrower and its Subsidiaries are valid and subsisting and are in full force.

(b) Each of the Borrower and its Subsidiaries owns, or is licensed, or otherwise has the right, to use, all patents, trademarks, service marks, trade names, copyrights and other intellectual property material to its business, and the use thereof by the Borrower and its Subsidiaries does not infringe in any material respect on the rights of any other Person.

(c) The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Borrower, in such amounts with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or any applicable Subsidiary operates.

**Section 4.13. Disclosure.** The Borrower has disclosed to the Lenders all agreements, instruments, and corporate or other restrictions to which the Borrower or any of its Subsidiaries is subject, and all other matters known to any of them, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Neither the Information Memorandum nor any of the reports (including without limitation all reports that the Borrower is required to file with the Securities and Exchange Commission), financial statements, certificates or other information furnished by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the negotiation or syndication of this Agreement or any other Loan Document or delivered hereunder or thereunder (as modified or supplemented by any other information so furnished) contains any material misstatement of

fact or omits to state any material fact necessary to make the statements therein, taken as a whole, in light of the circumstances under which they were made, not misleading.

**Section 4.14. Labor Relations.** There are no strikes, lockouts or other material labor disputes or grievances against the Borrower or any of its Subsidiaries, or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its Subsidiaries, and no significant unfair labor practice, charges or grievances are pending against the Borrower or any of its Subsidiaries, or to the Borrower's knowledge, threatened against any of them before any Governmental Authority. All payments due from the Borrower or any of its Subsidiaries pursuant to the provisions of any collective bargaining agreement have been paid or accrued as a liability on the books of the Borrower or any such Subsidiary, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**Section 4.15. Subsidiaries; No Real Property.** Schedule 4.15 sets forth the name of, the ownership interest of the Borrower in, the jurisdiction of incorporation or organization of, and the type of, each Subsidiary and identifies each Subsidiary that is a Subsidiary Guarantor, in each case as of the Closing Date. Neither the Borrower nor its Subsidiaries has a fee ownership interest in any real property.

**Section 4.16. Solvency.** After giving effect to the execution and delivery of the Loan Documents, the making of the Loans under this Agreement, each of the Borrower and its Subsidiaries are Solvent.

**Section 4.17. OFAC.** No Loan Party nor any Subsidiary of a Loan Party is a Sanctioned Person and, to the best of the knowledge of a Responsible Officer of the Borrower, none of the Borrower's Controlled Entities, nor any director, officer or employee of the Borrower, its Subsidiaries or its Controlled Entities (while serving for or employed by the Borrower, its Subsidiaries or any such Controlled Entity), is a Sanctioned Person. No part of the proceeds of any Loans hereunder will be used directly or indirectly to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Country or for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. The Borrower, its Subsidiaries and their respective officers and employees and to the knowledge of the Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.

**Section 4.18. Patriot Act.** No Loan Party is an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 et seq.), as amended or any enabling legislation or executive order relating thereto. No Loan Party nor any of its Subsidiaries is in violation of (a) the Trading with the Enemy Act, as amended, (b) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or (c) the Patriot Act. None of the Loan Parties (i) is a blocked person described in Section 1 of the Anti-Terrorism Order or (ii) to the best of its knowledge, engages in any dealings or transactions, or is otherwise associated, with any such blocked person.

## ARTICLE V

### AFFIRMATIVE COVENANTS

The Borrower covenants and agrees that so long as any Lender has a Commitment hereunder or any Obligation remains unpaid or outstanding:

**Section 5.1. Financial Statements and Other Information.** The Borrower will deliver to the Administrative Agent:

(a) as soon as available and in any event within 60 days after the end of each Fiscal Year of Borrower, a copy of the annual audited report for such Fiscal Year for the Borrower and its Subsidiaries, containing a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows (together with all footnotes thereto) of the Borrower and its Subsidiaries for such Fiscal Year, all in reasonable detail and reported on by PricewaterhouseCoopers LLP or other independent public accountants of nationally recognized standing (without a "going concern" or like qualification, exception or explanation and without any qualification or exception as to scope of such audit) to the effect that such financial statements present fairly in all material respects the financial condition and the results of operations of the Borrower and its Subsidiaries for such Fiscal Year on a consolidated and consolidating basis in accordance with GAAP and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards;

(b) as soon as available and in any event within 60 days after the end of each Fiscal Quarter of the Borrower, an unaudited consolidated and consolidating balance sheet of the Borrower and its Subsidiaries as of the end of such Fiscal Quarter and the related unaudited consolidated and consolidating statements of income and cash flows of the Borrower and its Subsidiaries for such Fiscal Quarter (with respect to statements of income only) and the then elapsed portion of such Fiscal Year, all certified by the chief financial officer or treasurer of the Borrower as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with the delivery of the financial statements referred to in clauses (a) and (b) above, a Compliance Certificate signed by the principal financial officer of the Borrower;

(d) concurrently with the delivery of the financial statements referred to in clause (a) above, a certificate of the accounting firm that reported on such financial statements stating whether they obtained any knowledge during the course of their examination of such financial statements of any Default or Event of Default (which certificate may be limited to the extent required by accounting rules or guidelines);

(e) as soon as available and in any event not later than the tenth day of each calendar month, a Borrowing Base Certificate as of the last day of the preceding month, and as soon as available, a monthly brokerage statement for each securities or deposit account held by Borrower or any Subsidiary;

(f) promptly but no later than five Business Days after the Borrower shall at any time have knowledge that there is a Borrowing Base Deficiency, a Borrowing Base Certificate as at that date the Borrower has knowledge of such Borrowing Base Deficiency indicating the amount of the Borrowing Base Deficiency as at the date the Borrower obtained knowledge of such deficiency and the

amount of the Borrowing Base Deficiency as of the date which is two Business Days prior to the date the Borrowing Base Certificate is delivered pursuant to this paragraph;

(g) as soon as available and in any event within 20 days after the end of each Fiscal Quarter of the Borrower, beginning with the Fiscal Quarter ended February 28, 2014, Borrower will submit its private investment valuations to the Administrative Agent;

(h) concurrently with the delivery of the financial statements referred to in clauses (a) and (b) above, beginning with the Fiscal Quarter ended February 28, 2014, a valuation report of the investments that are not Quoted Securities of the Borrower and its Subsidiaries, conducted by an Approved Third Party Appraiser;

(i) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all functions of said Commission, or with any national securities exchange, or distributed by the Borrower to its shareholders generally, as the case may be;

(j) promptly following any request therefor, such other information regarding the results of operations, business affairs, financial condition and loan and securities portfolio of the Borrower or any Subsidiary as the Administrative Agent or any Lender may reasonably request.

**Section 5.2. Notices of Material Events.** The Borrower will furnish to the Administrative Agent and each Lender prompt written notice after any Responsible Officer of the Borrower obtains knowledge of the following:

(a) the occurrence of any Default or Event of Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or, to the knowledge of the Borrower, affecting the Borrower or any Subsidiary which, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any event or any other development by which the Borrower or any of its Subsidiaries (i) fails to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) becomes subject to any Environmental Liability, (iii) receives notice of any claim with respect to any Environmental Liability, or (iv) becomes aware of any basis for any Environmental Liability and in each of the preceding clauses, which individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(d) the occurrence of any ERISA Event that alone, or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$1,000,000;

(e) the occurrence of any default or event of default, or the receipt by Borrower or any of its Subsidiaries of any written notice of an alleged default or event of default, respect of any Material Indebtedness of the Borrower or any of its Subsidiaries; 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 5.2 shall be accompanied by a written 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 5.3. Existence; Conduct of Business.** The Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its legal existence and its respective rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business and will continue to engage in the same business as presently conducted or such other businesses that are reasonably related thereto; provided, that nothing in this Section 5.3 shall prohibit any merger, consolidation, liquidation or dissolution permitted under Section 7.3.

**Section 5.4. Compliance with Laws, Etc.** The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and requirements of any Governmental Authority applicable to its business and properties, including without limitation, all Environmental Laws, ERISA and OSHA, except where the failure to do so, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**Section 5.5. Payment of Obligations.** The Borrower will, and will cause each of its Subsidiaries to, pay and discharge at or before maturity, all of its obligations and liabilities (including without limitation all taxes, assessments and other governmental charges, levies and all other claims that could result in a statutory Lien) before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

**Section 5.6. Books and Records.** The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities to the extent necessary to prepare the consolidated financial statements of Borrower in conformity with GAAP.

**Section 5.7. Visitation, Inspection, Etc.** The Borrower will, and will cause each of its Subsidiaries to, permit any representative of the Administrative Agent, or any Lender, to visit and inspect its properties, to conduct audits of the Collateral, to examine its books and records and to make copies and take extracts therefrom, and to discuss its affairs, finances and accounts with any of its officers and with its independent certified public accountants, all at such reasonable times and as often as the Administrative Agent or any Lender may reasonably request after reasonable prior notice to the Borrower; *provided, however*, if a Default or an Event of Default has occurred and is continuing, no prior notice shall be required. All reasonable expenses incurred by the Administrative Agent and, at any time after the occurrence and during the continuance of a Default or an Event of Default, any Lenders in connection with any such visit, inspection, audit, examination and discussions shall be borne by the Borrower; *provided, however*, so long as no Default or Event of Default has occurred and is continuing, Borrower shall not be required to pay such expenses for any visits and inspections that exceed two visits or inspections per Fiscal Year.

**Section 5.8. Maintenance of Properties; Insurance.** The Borrower will, and will cause each of its Subsidiaries to (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, (b) maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business, and the properties and business of its Subsidiaries, against loss or damage of the kinds customarily insured

against by companies in the same or similar businesses operating in the same or similar locations, and (c) at all times shall name the Administrative Agent as additional insured on all liability policies of the Borrower and its Subsidiaries.

**Section 5.9. Use of Proceeds.** The Borrower will use the proceeds of all Revolving Loans to repay loans outstanding under the Existing Credit Agreement and for investments consistent with the Borrower's Investment Objectives and to finance working capital needs. The Borrower will use the proceeds of all Term Loans for investments consistent with the Borrower's Investment Objectives and to finance working capital needs, including, without limitation, the repayment of outstanding Obligations. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that would violate any rule or regulation of the Board of Governors of the Federal Reserve System, including Regulations T, U or X.

**Section 5.10. Additional Subsidiaries; Additional Collateral; No Ownership of Real Property.** In the event that any Person becomes a Subsidiary of Borrower after the date hereof, Borrower will promptly notify Administrative Agent of that fact and cause such Subsidiary to execute and deliver to Administrative Agent a counterpart of the Subsidiary Guarantee Agreement and Security Agreement and to take all such further actions and execute all such further documents and instruments (including similar documents applicable to such Subsidiary required under Section 3.1) as may be necessary or, in the opinion of Administrative Agent, desirable to create in favor of Administrative Agent (or the Collateral Agent in accordance with the Intercreditor Agreement), for the benefit of Lenders, a valid and perfected first priority lien on all of the personal property assets of such Subsidiary described in the applicable forms of Security Documents. In addition, Borrower shall, or shall cause the Subsidiary that owns the Capital Stock of such Person, to execute and deliver to Administrative Agent a pledge agreement pledging the Capital Stock of such Person to the Administrative Agent and to deliver to Administrative Agent all certificates representing such Capital Stock of such Person (accompanied by irrevocable undated stock powers, duly endorsed in blank), all in form and substance satisfactory to the Administrative Agent in its sole discretion. Neither Borrower nor any of its Subsidiaries shall purchase, hold or otherwise acquire a fee ownership interest in any real property.

**Section 5.11. Portfolio Valuation and Diversifications, Etc.**

(a) Portfolio Valuation Etc.

(i) Settlement Date Basis. For purposes of this Agreement, all determinations of whether an investment is to be included as a Portfolio Investment shall be determined on a settlement-date basis, provided that no such investment shall be included as a Portfolio Investment to the extent it has not been paid for in full.

(ii) Determination of Values. The Borrower will conduct reviews of the value to be assigned to each of its Portfolio Investment as follows:

(A) Quoted Investments--External Review. With respect to Portfolio Investments (including Cash Equivalents) for which market quotations are readily available, the Borrower shall, not less frequently than once each calendar week, determine the market value of such Portfolio Investments which shall, in each case, be determined in accordance with one of the following methodologies (as selected by the Borrower):

(x) in the case of Bank Loans, the mean price as determined by one Approved Dealer selected by the Borrower and approved by the Administrative Agent in its sole discretion,

(y) in the case of any Portfolio Investment traded on an exchange, the closing price for such Portfolio Investment most recently posted on such exchange, and

(z) in the case of any other Portfolio Investment, the fair market value thereof as determined by an Approved Pricing Service; and

(B) Unquoted Investments--External Review. With respect to Portfolio Investments for which market quotations are not readily available, the Borrower shall request an Approved Third Party Appraiser to assist the Board of Directors of the Borrower in determining the fair market value of such Portfolio Investments, as at the last day of each Fiscal Quarter, provided that

(x) the Value of any such Portfolio Investment (i.e. a Portfolio Investment for which market quotations are not readily available) acquired during a Fiscal Quarter shall be deemed to be equal to the cost of such Portfolio Investment until such time as the fair market value of such Portfolio Investment is determined in accordance with the foregoing provisions of this sub-clause (B) as at the last day of such Fiscal Quarter and

(y) notwithstanding the foregoing, the Board of Directors of the Borrower may, without the assistance of an Approved Third Party Appraiser, determine the fair market value of Portfolio Investments so long as the aggregate Value thereof so determined does not at any time exceed 10% of the aggregate Borrowing Base, except that the fair market value of any Portfolio Investment that has been determined without the assistance of an Approved Third Party Appraiser as at the last day of any Fiscal Quarter shall be deemed to be zero as at the last day of the immediately succeeding Fiscal Quarter (but effective upon the date upon which the Borrowing Base Certificate for such last day is required to be delivered hereunder) if an Approved Third Party Appraiser has not assisted the Board of Directors of the Borrower in determining the fair market value of such Portfolio Investments, as at such date.

(C) Internal Review. The Borrower shall conduct internal reviews of all Portfolio Investments at least once each calendar week which shall take into account any events of which the Borrower has knowledge that adversely affect the value of the Portfolio Investments. If the value of any Portfolio Investment as most recently determined by the Borrower pursuant to this Section 5.11(a)(ii)(C) is lower than the value of such Portfolio Investment as most recently determined pursuant to Section 5.11(a)(ii)(A) and (B), such lower value shall be deemed to be the "Value" of such Portfolio Investment for purposes hereof, provided that the Value of any Portfolio Investment of the Borrower and its Subsidiaries shall be increased by the net unrealized gain as at the date such Value is determined of any Hedging Transaction entered into to hedge risks associated with such Portfolio Investment and reduced by the net unrealized loss as at such date of any such Hedging Transaction (such net unrealized gain or net unrealized loss, on any date, to be equal to the aggregate amount receivable or payable under the related Hedging Transaction if the same were terminated on such date).



(b) Failure to Determine Values. If the Borrower shall fail to determine the value of any Portfolio Investment as at any date pursuant to the requirements of sub-clauses (A), (B) or (C) of Section 5.11(a), then the “Value” of such Portfolio Investment as at such date shall be deemed to be zero.

(c) Administrative Agent Approval of Valuations. Per Section 5.1(g) above, the Borrower will submit its valuations to the Administrative Agent and the Administrative Agent shall have 10 days upon its receipt of the valuations to approve such valuations (used solely for the purposes of calculating the Borrowing Base), in its reasonable discretion. If the Administrative Agent does not object to the valuations within the 10 day period, the Administrative Agent shall be deemed to approve such valuations.

**Section 5.12. Calculation of Borrowing Base.** For purposes of this Agreement, the “**Borrowing Base**” shall be determined, as at any date of determination, as the sum of the Advance Rates of the Value of each Portfolio Investment, provided that:

(a) in the event that the portion of the Borrowing Base attributable to Private MLP Common and Preferred Units exceeds 25% of the total Borrowing Base, the Borrowing Base shall be reduced to the extent such portion exceeds 25% of the total Borrowing Base;

(b) in the event that the portion of the Borrowing Base attributable to the aggregate amount of Non-Performing Bank Loans, Non-Performing High Yield Securities, and Warrants exceeds 10% of the total Borrowing Base, the Borrowing Base shall be reduced to the extent such portion exceeds 10% of the total Borrowing Base;

(c) no Portfolio Investment may be included in the Borrowing Base until such time as such Portfolio Investment has been Delivered (as defined in the Guarantee and Security Agreement) to the Administrative Agent, and then only for so long as such Portfolio Investment continues to be Delivered as contemplated therein and is subject to a first priority security interest in favor of the Administrative Agent (or the Collateral Agent in accordance with the Intercreditor Agreement);

(d) the Advance Rate applicable to that portion of the aggregate Value of the Portfolio Investments subject to Lock-up Agreements that have a Lock-up Term equal to or less than ninety (90) days from the date of determination shall be reduced by 10%;

(e) the Advance Rate applicable to that portion of the aggregate Value of the Portfolio Investments subject to Lock-up Agreements that have a Lock-up Term of more than ninety (90) days but less than or equal to one-hundred eighty (180) days from the date of determination shall be reduced by 20%;

(f) no Portfolio Investment may be included in the Borrowing Base if the agreements evidencing such Portfolio Investment are subject to Lock-up Agreements that have a Lock-up Term of more than one-hundred eighty (180) days from the date of determination;

(g) the Advance Rate applicable to that portion of the aggregate Value of the Portfolio Investments that are subject to a Right of First Offer that is for an Offer Period of more than forty-five (45) days but less than or equal to ninety (90) days shall be reduced by 10%;

(h) no Portfolio Investment may be included in the Borrowing Base if the agreements evidencing such Portfolio Investment contain a Right of First Offer that is for an Offer Period of more than ninety (90) days;

(i) no reduction shall be made to the Advance Rate applicable to that portion of the Value of any Portfolio Investment subject to a Lock-up Agreement, a Right of First Offer or Tag Along Rights, if the agreements evidencing such Portfolio Investment provide that such Lock-up Agreement, Right of First Offer or Tag Along Rights, as applicable, expires or is of no force or effect upon any action to sell, transfer or otherwise liquidate, or to market or offer for sale, or solicit offers to purchase such Portfolio Investments in connection with the occurrence of an Event of Default;

(j) contributions of any single issuer of Portfolio Investments in a consolidated group of corporations or other entities to the Borrowing Base shall not exceed (i) with respect to Portfolio Investments that constitute Quoted Securities, 12.5% of the Borrowing Base and (ii) with respect to Portfolio Investments that do not constitute Quoted Securities, 7.5% of the Borrowing Base; and

(k) the Advance Rate applicable to that portion of the Value of any Portfolio Investment that is subject to a Tag Along Right shall be 0%. For these purposes, the amount that could be restricted from sale is equal to the percentage of the total Securities of the Borrower that would not be sold in such sale of Securities if all other parties to such Tag Along Rights elected to participate in such sale of Securities.

The Borrower shall from time to time deliver a Borrowing Base Certificate to the Administrative Agent and each Lender as provided in Sections 3.1(c)(xvii), 5.1(e), 5.1(f), 7.4(c) and 7.4(e).

**Section 5.13. Compliance with Investment Objectives.** The Borrower shall, and shall cause its Subsidiaries, to comply at all times with its Investment Objectives.

**Section 5.14. Post-Closing Covenant.** Not later than thirty (30) days after the Closing Date (or such longer period of time as agreed to by the Administrative Agent in its reasonable discretion), the Borrower shall deliver to the Administrative Agent endorsements to the policies of liability and property insurance maintained by the Borrower and its Subsidiaries that name the Administrative Agent as additional insured or loss payee, as applicable, and are otherwise in form and substance reasonably satisfactory to the Administrative Agent.

## ARTICLE VI

### FINANCIAL COVENANTS

The Borrower covenants and agrees that so long as any Lender has a Commitment hereunder or any Obligation remains unpaid or outstanding:

**Section 6.1. Minimum Asset Coverage Ratio.** The Borrower shall maintain at all times an Asset Coverage Ratio of at least 3.00:1.00.

**Section 6.2. Minimum Liquidity.** The Borrower will not permit the aggregate Value of the Portfolio Investments that can be converted to Cash in fewer than 10 Business Days without more than a 5% change in price to be less than 10% of the aggregate principal amount of (a) all of the Revolving Credit Exposures plus (b) the outstanding Term Loans plus (c) the Other Senior Secured Indebtedness during any period when Adjusted Exposure Amount is greater than 90% of the Adjusted Borrowing Base.

**Section 6.3. Total Leverage Asset Coverage Ratio.** The Borrower shall maintain at all times a Total Leverage Asset Coverage Ratio of at least 2.25 to 1.00.

## ARTICLE VII

### NEGATIVE COVENANTS

The Borrower covenants and agrees that so long as any Lender has a Commitment hereunder or any Obligation remains outstanding:

**Section 7.1. Indebtedness.** The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Indebtedness, except:

- (a) Indebtedness created pursuant to the Loan Documents;
- (b) Indebtedness of the Borrower and its Subsidiaries existing on the date hereof and set forth on Schedule 7.1 and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof (immediately prior to giving effect to such extension, renewal or replacement) or shorten the maturity or the weighted average life thereof;
- (c) Indebtedness of the Borrower owing to any Subsidiary and of any Subsidiary owing to the Borrower or any other Subsidiary;
- (d) Guarantees by the Borrower of Indebtedness of any Subsidiary Guarantor and by any Subsidiary of Indebtedness of the Borrower;
- (e) Indebtedness in respect of Hedging Obligations not prohibited by Section 7.9;
- (f) other unsecured Indebtedness in an aggregate principal amount not to exceed \$10,000,000 at any time outstanding;
- (g) Indebtedness secured on a *pari passu* basis with the Obligations in an aggregate principal amount not to exceed the amount available under the Borrowing Base at the time such Indebtedness is incurred (the “**Other Senior Secured Indebtedness**”); provided, that (x) no Event of Default has occurred and is continuing at the time such Indebtedness is incurred; (y) prior to incurring any Indebtedness pursuant to any Other Senior Secured Indebtedness, the Borrower shall have caused the Person extending such Indebtedness to the Borrower (the “**Pari Passu Creditor**”) to enter into an Intercreditor Agreement; and (z) no Other Senior Secured Indebtedness shall be secured unless the Obligations are secured on an equal and ratable basis with such Other Senior Secured Indebtedness (including with respect to any property that would not otherwise constitute “Collateral” hereunder); and
- (h) Indebtedness arising in connection with the accrual of any fees and expenses required to be paid under the Investment Advisory Agreement.

**Section 7.2. Negative Pledge.** The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Lien on any of its assets or property now owned or hereafter acquired or, except:

- (a) Liens securing the Obligations; provided, however, that no Liens may secure Hedging Obligations without securing all other Obligations on a basis at least *pari passu* with such Hedging Obligations and subject to the priority of payments set forth in Section 2.19 of this Agreement;
- (b) Permitted Encumbrances;

(c) any Liens on any property or asset of the Borrower or any Subsidiary existing on the Closing Date set forth on Schedule 7.2; provided, that such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary; and

(d) rights of set off, rights over a margin call account, any form of cash collateral or similar arrangement, in any case for obligations incurred in respect of any Hedging Transactions, so long as the amount of such obligations does not exceed \$5,000,000 at any time outstanding.

### **Section 7.3. Fundamental Changes.**

(a) The Borrower will not, and will not permit any Subsidiary Guarantor to, merge into or consolidate into any other Person, or permit any other Person to merge into or consolidate with it, or sell, lease, transfer or otherwise dispose of (in a single transaction or a series of transactions) all or substantially all of its assets (in each case, whether now owned or hereafter acquired) or all or substantially all of the stock of any of its Subsidiaries (in each case, whether now owned or hereafter acquired) or liquidate or dissolve; provided, that if at the time thereof and immediately after giving effect thereto, no Default or Event of Default shall have occurred and be continuing (i) the Borrower or any Subsidiary may merge with a Person if the Borrower (or such Subsidiary if the Borrower is not a party to such merger) is the surviving Person, (ii) any Subsidiary may merge into another Subsidiary; provided, that if any party to such merger is a Subsidiary Guarantor, the Subsidiary Guarantor shall be the surviving Person, (iii) any Subsidiary may sell, transfer, lease or otherwise dispose of all or substantially all of its assets to the Borrower or to a Subsidiary Guarantor, and (iv) any Subsidiary (other than a Subsidiary Guarantor) may liquidate or dissolve if 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.

(b) The Borrower will not, and will not permit any of its Subsidiaries to, engage in any business other than businesses of the type conducted by the Borrower and its Subsidiaries on the date hereof and businesses reasonably related thereto.

### **Section 7.4. Restricted Payments.**

The Borrower will not, nor will it permit any of its Subsidiaries to, declare to make, or agree to pay or make, directly or indirectly, any Restricted Payment, except that the Borrower may declare and pay:

(a) dividends with respect to the capital stock of the Borrower payable solely in additional shares of the Borrower's common stock;

(b) dividends and distributions in either case required under a Requirement of Law;  
and

(c) Restricted Payments in each case in cash or any other property, in addition to the dividends and distributions permitted under the foregoing clauses (a) and (b), so long as on the date of such Restricted Payment and after giving effect thereto no Default or Event of Default shall have occurred and be continuing.

**Section 7.5. Sale of Assets.** The Borrower will not, and will not permit any of its Subsidiaries to, convey, sell, lease, assign, transfer or otherwise dispose of, any of its assets, business or property, whether now owned or hereafter acquired, or, in the case of any Subsidiary, issue or sell any shares of such Subsidiary's common stock to any Person other than the Borrower or another Subsidiary Guarantor (or to qualify directors if required by applicable law), except (a) the sale or other disposition

for fair market value of obsolete or worn out property or other property not necessary for operations disposed of in the ordinary course of business; (b) the sale of inventory, Portfolio Investments, or other investments in the ordinary course of business; and (c) any sale or other disposition if, after giving effect thereto, the Borrower shall be in compliance on a pro forma basis after giving effect to such sale, with the covenants contained in Article 6, in each case recomputed as at the last day of the most recently ended Fiscal Quarter of the Borrower for which financial statements have been provided for under Section 5.1.

**Section 7.6. Transactions with Affiliates.** The Borrower will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Borrower and any Subsidiary Guarantor not involving any other Affiliates, (c) transactions and transfers provided in the Investment Advisory Agreement, and the Fee Waiver Agreement, (d) reasonable and customary fees and expenses paid to members of the board of directors (or similar governing body) of the Borrower and its Subsidiaries that are disclosed in the quarterly filings of Borrower, (e) Restricted Payments permitted by Section 7.4, (f) transactions in connection with the provision of managerial assistance to affiliated Portfolio Investments, including fees or other compensation payable in connection therewith, (g) co-investments with other advisory clients of Borrower's investment adviser or its Affiliate, brokerage transactions with Affiliated broker-dealers, or other transactions with Affiliates, in each case as permitted by applicable provisions of the Investment Company Act and the rules promulgated thereunder, and (h) any investment in any Affiliated Portfolio Investment or an investment transaction that results in the creation of an Affiliate.

**Section 7.7. Restrictive Agreements.** The Borrower will not, and will not permit any Subsidiary to, directly or indirectly, enter into, incur or permit to exist any agreement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any Subsidiary to create, incur or permit any Lien upon any of its assets or properties, whether now owned or hereafter acquired, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to its common stock, to make or repay loans or advances to the Borrower or any other Subsidiary, to Guarantee Indebtedness of the Borrower or any other Subsidiary or to transfer any of its property or assets to the Borrower or any Subsidiary of the Borrower; provided, that (i) the foregoing shall not apply to restrictions or conditions imposed by law or by this Agreement or any other Loan Document; (ii) the foregoing restriction shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions and conditions apply only to the property or assets securing such Indebtedness; (iii) the foregoing restriction shall not apply to customary provisions in leases and other contracts restricting the assignment thereof; (iv) the foregoing shall not apply to any agreements containing provisions (including, without limitation, any Lock-Up Agreement, Right of First Offer or Tag Along Rights) applicable to a Portfolio Investment that prohibit, restrict or impose any condition upon the ability of the Borrower to transfer such Portfolio Investment; and (v) the foregoing shall not apply to agreements evidencing or relating to Other Senior Secured Indebtedness.

**Section 7.8. Sale and Leaseback Transactions.** The Borrower will not, and will not permit any Subsidiary Guarantor to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereinafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred.

**Section 7.9. Hedging Transactions.** The Borrower will not, and will not permit any of the Subsidiaries to, enter into any Hedging Transaction, other than Hedging Transactions entered into

in the ordinary course of business (i) to hedge or mitigate risks to which the Borrower or any Subsidiary is exposed in the conduct of its business or the management of its liabilities, or (ii) with any counterparty who is or is anticipated to become, at the time that the Hedging Transaction is entered into, a borrower from a Loan Party or the issuer of a debt or equity interest to a Loan Party, which Hedging Transaction is entered into to hedge or mitigate risks to which such counterparty and its affiliates are exposed in the conduct of their businesses or the management of their liabilities, or (iii) to hedge or mitigate risks to which a Loan Party is exposed under Hedging Transactions described in the preceding clause (ii) or to effect an offset or unwind of any other Hedging Transaction; provided that the Loan Parties shall act in a reasonable and prudent manner to achieve, in the aggregate, substantially offsetting Hedging Transactions under clause (iii) with respect to the Net Mark to Market Exposure under the Hedging Transactions that are from time to time outstanding under clause (ii). Solely for the avoidance of doubt, the Borrower acknowledges that a Hedging Transaction entered into for speculative purposes or of a speculative nature is not a Hedging Transaction entered into in the ordinary course of business to hedge or mitigate risks.

**Section 7.10. Accounting Changes.** The Borrower will not, and will not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required or permitted by GAAP, or change the fiscal year of the Borrower or of any Subsidiary Guarantor, except to change the fiscal year of a Subsidiary Guarantor to conform its fiscal year to that of the Borrower.

**Section 7.11. Amendment to Material Documents.** Upon the occurrence and during the continuation of an Event of Default, the Borrower will not, and will not permit any of its Subsidiaries to, agree to or permit any amendment, modification or waiver of any provision of the Investment Advisory Agreement if the effect of such amendment, modification or waiver is to increase the amount of fees or other amounts payable by the Borrower or any of its Subsidiaries under such agreements or alter the payment schedule with respect to such fees or such other amounts without the prior written consent of the Administrative Agent.

**Section 7.12. Loans, Etc.** The Borrower will not permit at any time the aggregate amount of all unfunded commitments of the Borrower and its Subsidiaries to provide loans, advances or Guarantees with respect to the Portfolio Investments (but excluding any “unapproved capital expenditure amount” as defined below) to exceed the sum of (i) all cash of the Borrower and its Subsidiaries held in deposit accounts that are subject to a Control Agreement granting the Administrative Agent (or the Collateral Agent in accordance with the Intercreditor Agreement) a first priority security interest therein, plus (ii) the difference between (x) the Revolving Commitment Amount minus (y) the Revolving Credit Exposure. For purposes of this Section 7.12, “unapproved capital expenditure amount” means the portion of any commitment that (i) may only be used for capital expenditures (including drilling and completion of wells, the purchase of assets or other capital expenditures) that are approved by (or consented to by) the Borrower or such Subsidiary in its sole discretion or words of similar effect (whether under a specific approval or under a budget that must be approved) and (ii) exceeds the amount of the capital expenditures that have been so approved and that, if applicable, will not be paid from cash flow from operations under the approved budget.

**Section 7.13. Deposit Accounts; Other Accounts.** The Borrower will not, and will not permit any of its Subsidiaries to, enter into any agreement or open any account with any depository, securities intermediary or commodities intermediary which is not subject to a Control Agreement with respect to such deposit, securities, commodity or similar account maintained by such Person (other than (i) any payroll account so long as such payroll account is a zero balance account, (ii) withholding tax and fiduciary accounts (and other accounts for the benefit of employees), and (iii) the Approved Brokerage Accounts so long as the aggregate amount held in such Approved Brokerage Accounts does not exceed \$5,000,000 at any time).

**Section 7.14. Government Regulation.** Neither the Borrower nor any of its Subsidiaries (a) is or may become subject at any time to any law, regulation, or list of any Government Authority of the United States (including, without limitation, the U.S. Office of Foreign Asset Control list) that directly prohibits or limits Lenders or the Administrative Agent from making any advance or extension of credit to Borrower or from otherwise conducting business with the Loan Parties, or (b) fail to provide documentary and other evidence of the identity of the Loan Parties as may be reasonably requested by Lenders or the Administrative Agent at any time to enable Lenders or the Administrative Agent to verify the identity of the Loan Parties or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 1 U.S.C. Section 5318.

**Section 7.15. Use of Proceeds.** The Borrower will not request any Borrowing, and the Borrower shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (C) in any manner that would result in the violation of any Sanctions applicable to the Borrower or any of its Subsidiaries.

## ARTICLE VIII

### EVENTS OF DEFAULT

**Section 8.1. Events of Default.** If any of the following events (each an “*Event of Default*”) shall occur:

(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 or otherwise; or

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount payable under clause (a) of this Section 8.1) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days; or

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary in or in connection with this Agreement or any other Loan Document (including the Schedules attached thereto) and any amendments or modifications hereof or waivers hereunder, or in any certificate, report, financial statement or other document submitted to the Administrative Agent or the Lenders by any Loan Party or any representative of any Loan Party pursuant to or in connection with this Agreement or any other Loan Document shall prove to be incorrect in any material respect (or, if such representation or warranty is by its terms qualified by concepts of materiality or a Material Adverse Effect, such representation and warranty shall prove to be incorrect in any respect) when made or deemed made or submitted; or

(d) the Borrower shall fail to observe or perform any covenant or agreement contained in Sections 5.1, 5.2, 5.3 (with respect to the Borrower’s existence) or 5.14 or in Articles VI or VII; or

(e) any Loan Party shall fail to observe or perform any covenant or agreement contained in this Agreement (other than those referred to in clauses (a), (b) and (d) above or any other Loan Document), and such failure shall remain unremedied for 30 days after the earlier of (i) any officer of the Borrower becomes aware of such failure, or (ii) notice thereof shall have been given to the Borrower by the Administrative Agent or any Lender; or

(f) a Borrowing Base Deficiency shall occur and continue unremedied for a period of five or more Business Days after delivery of a Borrowing Base Certificate demonstrating such Borrowing Base Deficiency pursuant to Section 5.1(f); or

(g) the Borrower or any Subsidiary (whether as primary obligor or as guarantor or other surety) shall fail to pay any principal of or premium or interest on any Material Indebtedness that is outstanding (other than any Other Senior Secured Indebtedness), when and as the same shall become due and payable (whether at scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument evidencing or governing such Material Indebtedness; or any other event shall occur or condition shall exist under any agreement or instrument relating to such Material Indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or permit the acceleration of, the maturity of such Indebtedness; or any such Material Indebtedness shall be declared to be due and payable; or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or any offer to prepay, redeem, purchase or defease such Material Indebtedness shall be required to be made, in each case prior to the stated maturity thereof; or

(h) the Borrower or any Subsidiary shall (i) commence a voluntary case or other proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official of it or any substantial part of its property, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) of this Section 8.1, (iii) apply for or consent to the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Borrower or any such Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, or (vi) take any action for the purpose of effecting any of the foregoing; or

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Subsidiary or its debts, or any substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Borrower or any Subsidiary or for a substantial part of its assets, and in any such case, such proceeding or petition shall remain undismissed for a period of 60 days or an order or decree approving or ordering any of the foregoing shall be entered; or

(j) the Borrower or any Subsidiary shall become unable to pay, shall admit in writing its inability to pay, or shall fail to pay, its debts as they become due; or

(k) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with other ERISA Events that have occurred, could reasonably be expected to result in liability to the Borrower and the Subsidiaries in an aggregate amount exceeding \$1,000,000; or



(l) any judgment or order for the payment of money in excess of \$5,000,000 in the aggregate shall be rendered against the Borrower or any Subsidiary, and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be a period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(m) any non-monetary judgment or order shall be rendered against the Borrower or any Subsidiary that could reasonably be expected to have a Material Adverse Effect, and there shall be a period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(n) a Change in Control shall occur or exist; or

(o) the Liens created by the Security Documents shall, at any time, not be valid and perfected (to the extent perfection by filing, registration, recordation, possession or control is required herein or therein) in favor of the Administrative Agent, free and clear of all other Liens (other than Permitted Encumbrances); or

(p) any provision of any Security Document shall for any reason cease to be valid and binding on, or enforceable against, any Subsidiary Guarantor or the Borrower, as applicable, or any Subsidiary Guarantor or the Borrower shall so state in writing, or any Subsidiary Guarantor or the Borrower shall seek to terminate any Security Document; or

(q) any event of default (after giving effect to any applicable grace period) shall have occurred and be continuing under any Other Senior Secured Indebtedness, or any Intercreditor Agreement shall cease to be in full force and effect, or the validity or enforceability thereof is disaffirmed by or on behalf of the Pari Passu Creditor, or any Obligations fail to constitute pari passu indebtedness for purposes of any Intercreditor Agreement, or all or any part of the Other Senior Secured Indebtedness is accelerated, is declared to be due and payable or is required to be prepaid or redeemed, in each case prior to the stated maturity thereof; or

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Section 8.1) and at any time thereafter during the continuance of such event, the Administrative Agent may, and upon the written request of the Required Lenders shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, whereupon the Commitment of each Lender shall terminate immediately; (ii) declare the principal of and any accrued interest on the Loans, and all other Obligations owing hereunder, to be, whereupon the same shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; (iii) exercise all remedies contained in any other Loan Document and (iv) exercise any other remedies available at law or equity; and that, if an Event of Default specified in either clause (h) or (i) shall occur, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon, and all fees, and all other Obligations 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.

## ARTICLE IX

### THE ADMINISTRATIVE AGENT

**Section 9.1. Appointment of Administrative Agent.** Each Lender irrevocably appoints SunTrust Bank as the Administrative Agent and authorizes it to take such actions on its behalf

and to exercise such powers as are delegated to the Administrative Agent under this Agreement and the other Loan Documents, together with all such actions and powers that are reasonably incidental thereto. The Administrative Agent may perform any of its duties hereunder or under the other Loan Documents by or through any one or more sub-agents or attorneys-in-fact appointed by the Administrative Agent. The Administrative Agent and any such sub-agent or attorney-in-fact may perform any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions set forth in this Article shall apply to any such sub-agent or attorney-in-fact and the Related Parties of the Administrative Agent, any such sub-agent and any such attorney-in-fact 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.

**Section 9.2. Nature of Duties of Administrative Agent.** The Administrative Agent shall not have any duties or obligations except those expressly set forth in this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or an Event of Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except those discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.2), and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not 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 Subsidiaries that is communicated to or obtained by the Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it, its sub-agents or attorneys-in-fact with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.2) or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents or attorneys-in-fact selected by it with reasonable care. The Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof (which notice shall include an express reference to such event being a “Default” or “Event of Default” hereunder) is given to the Administrative Agent by the Borrower or any Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any 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 and conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article III or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent. The Administrative Agent may consult with legal counsel (including counsel for the Borrower) concerning all matters pertaining to such duties.

**Section 9.3. Lack of Reliance on the Administrative Agent.** Each of the Lenders 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 of the Lenders 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 has deemed appropriate, continue to make its own decisions in taking or not taking of any action under or based on this Agreement, any related agreement or any document furnished hereunder or thereunder.

**Section 9.4. Certain Rights of the Administrative Agent.** If the Administrative Agent shall request instructions from the Required Lenders with respect to any action or actions (including the failure to act) in connection with this Agreement, the Administrative Agent shall be entitled to refrain from such act or taking such act, unless and until it shall have received instructions from such Lenders; and the Administrative Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting hereunder in accordance with the instructions of the Required Lenders where required by the terms of this Agreement.

**Section 9.5. 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, posting or other distribution) believed by it to be genuine and to have been signed, sent or made by the proper Person. The Administrative Agent may also rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (including counsel for the Borrower), independent public 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 such counsel, accountants or experts.

**Section 9.6. The Administrative Agent in its Individual Capacity.** The bank serving as the Administrative Agent shall have the same rights and powers under this Agreement and any other Loan Document in its capacity as a Lender as any other Lender and may exercise or refrain from exercising the same as though it were not the Administrative Agent; and the terms “Lenders”, “Required Lenders” or any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity. The bank acting as the Administrative Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of business with the Borrower or any Subsidiary or Affiliate of the Borrower as if it were not the Administrative Agent hereunder.

**Section 9.7. Successor Administrative Agent.**

(a) The Administrative Agent may resign at any time by giving notice thereof to the Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent, subject to the approval by the Borrower provided that no Default or Event of Default shall exist at such time. If no successor Administrative Agent shall have been so appointed, and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which shall be a commercial bank organized under the laws of the United States of America or any state thereof or a bank which maintains an office in the United States, having a combined capital and surplus of at least \$500,000,000.

(b) Upon the acceptance of its appointment as the Administrative Agent hereunder by a successor, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. If within 45 days after written notice is given of the retiring Administrative Agent’s resignation under this Section 9.7 no successor Administrative Agent shall have been appointed and shall have accepted such appointment, then on such 45<sup>th</sup> day (i) the retiring Administrative Agent’s resignation shall become effective, (ii) the retiring Administrative Agent shall thereupon be discharged from its duties and obligations under the Loan Documents and (iii) the Required Lenders shall thereafter

perform all duties of the retiring Administrative Agent under the Loan Documents until such time as the Required Lenders appoint a successor Administrative Agent as provided above. After any retiring Administrative Agent's resignation hereunder, the provisions of this Article IX shall continue in effect for the benefit of such retiring Administrative Agent and its representatives and agents in respect of any actions taken or not taken by any of them while it was serving as the Administrative Agent.

**Section 9.8. Withholding Tax.** (a) To the extent required by any applicable law, the Administrative Agent may withhold from any interest payment to any Lender an amount equivalent to any applicable withholding tax. If the Internal Revenue Service or any authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstances that rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), such Lender shall indemnify the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs and any out of pocket expenses.

(b) Without duplication of any indemnity provided under subsection (a) of this Section, each Lender shall also indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes or Other Taxes attributable to such Lender (to the extent that the Administrative Agent has not already been reimbursed by the Borrower 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 10.4(d) 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 subsection.

**Section 9.9. Administrative Agent May File Proofs of Claim.**

(a) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or any Revolving Credit Exposure 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:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans or Revolving Credit Exposure 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 its agents and counsel and all other amounts due the Lenders and the Administrative Agent under Section 10.3) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and

(b) 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 10.3.

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 or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

**Section 9.10. Authorization to Execute other Loan Documents** Each Lender hereby authorizes the Administrative Agent to execute on behalf of all Lenders (a) all Loan Documents other than this Agreement, (b) any release of the guaranty of a Subsidiary Guarantor to the extent expressly permitted by this Agreement, (c) any release of collateral to the extent expressly permitted by this Agreement and (d) contemporaneously with the incurrence of Indebtedness by the Borrower permitted pursuant to Section 7.1(g), an Intercreditor Agreement.

**Section 9.11. Syndication Agent and Documentation Agent**. Each Lender hereby designates Citibank, N.A. as Syndication Agent and agrees that the Syndication Agent shall have no duties or obligations under any Loan Documents to any Lender or any Loan Party. Each Lender hereby designates UBS Securities LLC and The Bank of Nova Scotia, as Co-Documentation Agents and agrees that the Co-Documentation Agents shall have no duties or obligations under any Loan Documents to any Lender or any Loan Party.

**Section 9.12. Approved Third Party Appraiser Release**. Each Lender hereby agrees to deliver to the Approved Third Party Appraiser a release in form and substance satisfactory to the Borrower and the Administrative Agent, prior to becoming a Lender hereunder.

## ARTICLE X

### MISCELLANEOUS

#### **Section 10.1. Notices**

(a) Written Notices.

(i) Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications to any party herein to be effective shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

To the Borrower:



With a copy to:

[REDACTED]

To the Administrative Agent:

[REDACTED]

With a copy to:

[REDACTED]

and

[REDACTED]

To any other Lender:

the address set forth in the Administrative Questionnaire or the Assignment and Acceptance Agreement executed by such Lender

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All such notices and other communications shall, when transmitted by overnight delivery, or faxed, be effective when delivered for overnight (next-day) delivery, or transmitted in legible form by facsimile machine, respectively, or if mailed, upon the third Business Day after the date deposited into the mail or if delivered, upon delivery; provided, that notices delivered to the Administrative Agent shall not be effective until actually received by such Person at its address specified in this Section 10.1.

(ii) Any agreement of the Administrative Agent and the Lenders herein to receive certain notices by telephone or facsimile is solely for the convenience and at the request of the Borrower. The Administrative Agent and the Lenders shall be entitled to rely on the authority of any Person purporting to be a Person authorized by the Borrower to give such notice and the Administrative Agent and Lenders shall not have any liability to the Borrower or other Person on account of any action taken or not taken by the Administrative Agent or the Lenders in reliance upon such telephonic or facsimile notice. The obligation of the Borrower to repay the Loans and all other Obligations hereunder shall not be affected in any way or to any extent by any failure of the Administrative Agent and the Lenders to receive written confirmation of any telephonic or facsimile notice or the receipt by the Administrative Agent and the Lenders of a confirmation

which is at variance with the terms understood by the Administrative Agent and the Lenders to be contained in any such telephonic or facsimile notice.

(b) Electronic Communications.

(i) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II unless such Lender and Administrative Agent have agreed to receive notices under such Section by electronic communication and have agreed to the procedures governing such communications. Administrative Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(ii) Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Administrative Agent shall execute, without further consent or approval of any Lender, so long as no Default or Event of Default shall have occurred which is continuing or would result therefrom (i) a release of the guaranty of a Subsidiary upon the sale or other disposition of such Subsidiary permitted under the terms of this Agreement or pursuant to any consent or approval by the Required Lenders and (ii) a release of collateral upon the sale or other disposition of such collateral permitted under the terms of this Agreement or pursuant to any consent or approval by Required Lenders.

**Section 10.2. Waiver; Amendments.**

(a) No failure or delay by the Administrative Agent or any Lender in exercising any right or power hereunder or any other Loan Document, and no course of dealing between the Borrower and the Administrative Agent or any Lender, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power hereunder or thereunder. 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 provided by law. 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 paragraph (b) of this Section 10.2, 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 or Event of Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default or Event of Default at the time.

(b) No amendment or waiver of any provision of this Agreement or the other Loan Documents, nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Borrower and the Required Lenders or the Borrower and the Administrative Agent with the consent of the Required Lenders and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, that no amendment or waiver 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, without the written consent of each Lender affected thereby, (iii) postpone the date fixed for any payment of any principal of, or interest on, any Loan or interest thereon or any fees hereunder or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date for the termination or reduction of any Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.19 (b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change any of the provisions of this Section 10.2 or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the consent of each Lender; (vi) release all or substantially all of the guarantors or limit the liability of any such guarantors under any guaranty agreement, without the written consent of each Lender; (vii) modify or adjust the definition of “Borrowing Base” or any defined term used therein, except for reductions in advance rates, impositions of reserves and impositions of more restrictive eligibility standards that the Administrative Agent is permitted to make pursuant to such definitions, without the consent of the Required Lenders; or (viii) release all or substantially all collateral (if any) securing any of the Obligations, without the written consent of each Lender; provided further, that no such agreement shall amend, modify or otherwise affect the rights, duties or obligations of the Administrative Agent without the prior written consent of such Person. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended, and amounts payable to such Lender hereunder may not be permanently reduced without the consent of such Lender (other than reductions in fees and interest in which such reduction does not disproportionately affect such Lender). Notwithstanding anything contained herein to the contrary, this Agreement may be amended and restated without the consent of any Lender (but with the consent of the Borrower and the Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated (but such Lender shall continue to be entitled to the benefits of Sections 2.16, 2.17, 2.18 and 10.3), such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement.

### **Section 10.3. Expenses; Indemnification.**

(a) The Borrower shall pay (i) all reasonable, out-of-pocket costs and expenses of the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent and its Affiliates, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents and any amendments, modifications or waivers thereof (whether or not the transactions contemplated in this Agreement or any other Loan Document shall be consummated) and (ii) all out-of-pocket costs and expenses (including, without limitation, the reasonable fees, charges and disbursements of outside counsel) incurred by the Administrative Agent or any Lender in connection with the enforcement or protection of its rights in connection with this Agreement, including its rights under this Section 10.3, or in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.



(b) The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “***Indemnitee***”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of any Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through Syntrak or any other Internet or intranet website, except as a result of such Indemnitee’s gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and nonappealable judgment.

(c) To the extent that the Borrower fails to pay any amount required to be paid to the Administrative Agent under clauses (a) or (b) hereof, each Lender severally agrees to pay to the Administrative Agent, as the case may be, such Lender’s Pro Rata Share (determined as of the time that the unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided, that the unreimbursed expense or indemnified payment, 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 actual or direct damages) arising out of, in connection with or as a result of, this Agreement or any agreement or instrument contemplated hereby, the transactions contemplated therein, any Loan or the use of proceeds thereof.

(e) All amounts due under this Section 10.3 shall be payable promptly after written demand therefor.

#### **Section 10.4. 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 the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of

paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans and Revolving Credit Exposure outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans and Revolving Credit Exposure of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Acceptance, as of the Trade Date) shall not be less than \$1,000,000 and, with respect to Term Loans, in minimum increments of \$1,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans, Revolving Credit Exposure or the Commitments assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Commitments on a non-*pro rata* basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund provided, that, the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments to a Person that is not a Lender with a Commitment.

(iv) Assignment and Acceptance. The parties to each assignment shall deliver to the Administrative Agent (A) a duly executed Assignment and Acceptance, (B) a processing and recordation fee of \$3,500, (C) an Administrative Questionnaire unless the assignee is already a Lender and (D) the documents required under Section 2.18 if such assignee is a Foreign Lender.

(v) No Assignment to Borrower. No such assignment shall be made to the Borrower or any of the Borrower's Affiliates or Subsidiaries.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

(vii) Approved Third Party Appraiser Release. The successor or assignee to any assignment, if such successor or assignee is not a Lender, shall execute and deliver to the Approved Third Party Appraiser in form and substance satisfactory to the Borrower and the Administrative Agent.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section 10.4, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Acceptance, 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 Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance 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 Sections 2.16, 2.17, 2.18 and 10.3 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph 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 paragraph (d) of this Section 10.4. If the consent of the Borrower to an assignment is required hereunder (including a consent to an assignment which does not meet the minimum assignment thresholds specified above), the Borrower shall be deemed to have given its consent five Business Days after the date notice thereof has actually been delivered by the assigning Lender (through the Administrative Agent) to the Borrower, unless such consent is expressly refused by the Borrower prior to such fifth Business Day.

(c) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in Atlanta, Georgia a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount (and stated interest) of the Loans and Revolving Credit Exposure owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Information contained in the Register with respect to any Lender shall be available for inspection by such Lender at any reasonable time and from time to time upon reasonable prior notice; information contained in the Register shall also be available for inspection by the Borrower at any reasonable time and from time to time upon reasonable prior notice. In establishing and maintaining the Register, Administrative Agent shall serve as Borrower's agent solely for tax purposes and solely with respect to the actions described in this Section, and the Borrower hereby agrees that, to the extent SunTrust Bank serves in such capacity, SunTrust Bank and its officers, directors, employees, agents, sub-agents and affiliates shall constitute "Indemnitees."

(d) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent sell participations to any Person (other than a natural person, the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

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 with respect to the following to the extent affecting such Participant: (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, without the written consent of each Lender affected thereby, (iii) postpone the date fixed for any payment of any principal of, or interest on, any Loan or interest thereon or any fees hereunder or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date for the termination or reduction of any Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.19(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change any of the provisions of this Section 10.4 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the consent of each Lender; (vi) release any guarantor or limit the liability of any such guarantor under any guaranty agreement without the written consent of each Lender except to the extent such release is expressly provided under the terms of the such guaranty agreement; or (vii) release all or substantially all collateral (if any) securing any of the Obligations. Subject to paragraph (e) of this Section 10.4, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.16, 2.17, and 2.18 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 10.4. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Lender, provided such Participant agrees to be subject to Section 2.19 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register in the United States 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 to any Person (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or other obligations under any Loan Document) 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.

(e) A Participant shall not be entitled to receive any greater payment under Section 2.16 and Section 2.18 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 2.18 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 2.18(e) as though it were a Lender.

(f) 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; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

**Section 10.5. Governing Law; Jurisdiction; Consent to Service of Process.**

(a) This Agreement and the other Loan Documents shall be construed in accordance with and be governed by the law (without giving effect to the conflict of law principles thereof) of the State of New York.

(b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court of the Southern District of New York, and of any state court of the State of New York sitting in New York County and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document or the transactions contemplated hereby or thereby, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York state court or, to the extent permitted by applicable law, such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or its properties in the courts of any jurisdiction.

(c) The Borrower irrevocably and unconditionally waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding described in paragraph (b) of this Section 10.5 and brought in any court referred to in paragraph (b) of this Section 10.5. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to the service of process in the manner provided for notices in Section 10.1. Nothing in this Agreement or in any other Loan Document will affect the right of any party hereto to serve process in any other manner permitted by law.

**Section 10.6. WAIVER OF JURY TRIAL.** EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS

AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.6.

**Section 10.7. Right of Setoff.** In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, each Lender shall have the right, at any time or from time to time upon the occurrence and during the continuance of an Event of Default, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, to set off and apply against all deposits (general or special, time or demand, provisional or final) of the Borrower at any time held or other obligations at any time owing by such Lender to or for the credit or the account of the Borrower against any and all Obligations held by such Lender irrespective of whether such Lender shall have made demand hereunder and although such Obligations may be unmaturing. Each Lender agrees promptly to notify the Administrative Agent and the Borrower after any such set-off and any application made by such Lender; provided, that the failure to give such notice shall not affect the validity of such set-off and application. Each Lender agrees to apply all amounts collected from any such set-off to the Obligations before applying such amounts to any other Indebtedness or other obligations owed by the Borrower and any of its Subsidiaries to such Lender.

**Section 10.8. Counterparts; Integration.** This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Agreement, the Fee Letter, the First Amendment Fee Letter, the other Loan Documents, and any separate letter agreement(s) relating to any fees payable to the Administrative Agent and its Affiliates constitute the entire agreement among the parties hereto and thereto and their affiliates regarding the subject matters hereof and thereof and supersede all prior agreements and understandings, oral or written, regarding such subject matters. Delivery of an executed counterpart to this Agreement or any other Loan Document by facsimile transmission or by electronic mail in pdf form shall be as effective as delivery of an original executed counterpart hereof.

**Section 10.9. Survival.** 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 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 Sections 2.16, 2.17, 2.18, and 10.3 and Article IX 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 or any provision hereof. All representations and warranties made herein, in the certificates, reports, notices, and other documents delivered pursuant to this Agreement shall survive the execution and delivery of this Agreement and the other Loan Documents, and the making of the Loans.

**Section 10.10. Severability.** Any provision of this Agreement or any other Loan Document held to be illegal, invalid or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity or unenforceability without affecting the legality, validity or enforceability of the remaining provisions hereof or thereof; and the illegality, invalidity or unenforceability of a particular provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 10.11. Confidentiality.** Each of the Administrative Agent and each Lender agrees to take normal and reasonable precautions to maintain the confidentiality of any information designated in writing as confidential and provided to it by the Borrower or any Subsidiary, except that such information may be disclosed (i) to any Related Party of the Administrative Agent or any such Lender, including without limitation accountants, legal counsel and other advisors, (ii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iii) to the extent requested by any regulatory agency or authority, (iv) to the extent that such information becomes publicly available other than as a result of a breach of this Section 10.11, or which becomes available to the Administrative Agent, any Lender or any Related Party of any of the foregoing on a nonconfidential basis from a source other than the Borrower, (v) in connection with the exercise of any remedy hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) subject to provisions substantially similar to this Section 10.11, to any actual or prospective assignee or Participant, or (vii) with the consent of the Borrower. Any Person required to maintain the confidentiality of any information as provided for in this Section 10.11 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 its own confidential information.

**Section 10.12. Interest Rate Limitation.** Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which may be treated as interest on such Loan under applicable law (collectively, the “Charges”), shall exceed the maximum lawful rate of interest (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by a Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 10.12 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment (to the extent permitted by applicable law), shall have been received by such Lender.

**Section 10.13. Waiver of Effect of Corporate Seal.** The Borrower represents and warrants that neither it nor any other Loan Party is required to affix its corporate seal to this Agreement or any other Loan Document pursuant to any Requirement of Law or regulation, agrees that this Agreement is delivered by Borrower under seal and waives any shortening of the statute of limitations that may result from not affixing the corporate seal to this Agreement or such other Loan Documents.

**Section 10.14. Patriot Act.** The Administrative Agent and each Lender hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the Patriot Act.

**Section 10.15. NO ORAL AGREEMENTS, WAIVER.** THE LOAN DOCUMENTS EMBODY THE ENTIRE AGREEMENT AND UNDERSTANDING BETWEEN THE PARTIES AND SUPERSEDE ALL OTHER AGREEMENTS AND UNDERSTANDINGS BETWEEN SUCH PARTIES RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF. THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES 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.

**Section 10.16. Location of Closing.** Each Lender acknowledges and agrees that it has delivered, with the intent to be bound, its executed counterparts of this Agreement to the Administrative Agent, c/o King & Spalding LLP, 1185 Avenue of the Americas, New York, New York 10036. Borrower acknowledges and agrees that it has delivered, with the intent to be bound, its executed counterparts of this Agreement and each other Loan Document, together with all other documents, instruments, opinions, certificates and other items required under Section 3.1, to the Administrative Agent, c/o King & Spalding LLP, 1185 Avenue of the Americas, New York, New York 10036. All parties agree that closing of the transactions contemplated by this Agreement has occurred in New York.

**Section 10.17. Existing Credit Agreement.** Effective upon satisfaction of the conditions set forth in Section 3.1, this Agreement amends, restates, supersedes and replaces the Existing Credit Agreement in its entirety.

**Section 10.18. Amendment and Restatement.** This Agreement constitutes an amendment and restatement of the Existing Credit Agreement and is not, and is not intended by the parties to be, a novation of the Existing Credit Agreement. All rights and obligations of the parties shall continue in effect, except as otherwise expressly set forth herein. Without limiting the foregoing, no Default or Event of Default existing under the Existing Credit Agreement as of the Closing Date shall be deemed waived or cured by this amendment and restatement thereof. The Revolving Commitments of the Lenders under this Agreement after giving effect to this amendment and restatement are set forth on Schedule I. On and after the Closing Date, all Revolving Loans and other extensions of credit shall be made by the Lenders under this Agreement in accordance with their respective Pro Rata Shares of the Revolving Commitments as in effect from time to time. All references in the other Loan Documents to the Credit Agreement shall be deemed to refer to and mean this Agreement, as the same may be further amended, supplemented, and restated from time to time. On the Closing Date, all amounts outstanding under the Existing Credit Agreement, together with all accrued and unpaid interest, fees and other amounts shall be automatically paid in full by the initial Borrowing hereunder and the commitments of the Lenders under the Existing Credit Agreement which are not parties to this Agreement to fund additional advances shall terminate automatically.

**Section 10.19. Conflicts.** In the event of any conflict between the provisions of this Agreement and the provisions of any Intercreditor Agreement, the provisions of such Intercreditor Agreement shall govern and control.

*(remainder of page left intentionally blank)*



**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed under seal in the case of the Borrower by their respective authorized officers as of the day and year first above written.

**KAYNE ANDERSON ENERGY  
DEVELOPMENT COMPANY**

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

**[SIGNATURE PAGE TO SECOND AMENDED AND RESTATED SENIOR SECURED  
REVOLVING CREDIT AGREEMENT]**

**SUNTRUST BANK, as Administrative Agent, and  
as a Lender**

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

**[SIGNATURE PAGE TO SECOND AMENDED AND RESTATED SENIOR SECURED  
REVOLVING CREDIT AGREEMENT]**

## Schedule I

### REVOLVING COMMITMENT AMOUNTS

<b>Lender</b>	<b>Commitment</b>
SunTrust Bank	\$20,000,000
Citibank, N.A.	\$17,000,000
UBS AG, Stamford Branch	\$17,000,000
The Bank of Nova Scotia	\$17,000,000
Bank of America, N.A.	\$15,000,000
Wells Fargo Bank, National Association	\$11,000,000
JPMorgan Chase Bank, N.A.	\$9,000,000
Royal Bank of Canada	\$7,500,000
Stifel Bank & Trust	\$6,500,000
<b>Total</b>	<b>\$120,000,000.00</b>

### TERM LOAN COMMITMENT AMOUNT

<b>Lender</b>	<b>Commitment</b>
The Bank of Nova Scotia	\$70,000,000
<b>Total</b>	<b>\$70,000,000.00</b>

**Exhibit 5.1(c)**

**Form of Compliance Certificate**

**(See Attached)**

**EXHIBIT 5.1(c)**  
**FORM OF COMPLIANCE CERTIFICATE**

[\_\_\_\_\_], 20\_\_

To: SunTrust Bank, as Administrative Agent  
3333 Peachtree Road, 8th Floor  
Atlanta, GA 30326  
Attention: Jared Cohen  
Telecopy Number: (404) 439-7470

Ladies and Gentlemen:

Reference is made to that certain Second Amended and Restated Senior Secured Revolving Credit Agreement dated as of January 28, 2014 (as amended and in effect on the date hereof, the "Credit Agreement"), among KAYNE ANDERSON ENERGY DEVELOPMENT COMPANY (the "Borrower"), the lenders named therein, and SunTrust Bank, as Administrative Agent. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.

I, Terry Hart, being the duly elected and qualified, and acting in my capacity as chief financial officer of the Borrower, hereby certify to the Administrative Agent and each Lender as follows:

1. The consolidated financial statements of the Borrower and its Subsidiaries attached hereto for the fiscal **[quarter][year]** ending [\_\_\_\_\_] fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as at the end of such fiscal **[quarter][year]** on a consolidated basis, and the related statements of operations and cash flows of the Borrower and its Subsidiaries for such fiscal **[quarter][year]**, in accordance with generally accepted accounting principles in the United States consistently applied (subject, in the case of such quarterly financial statements, to normal year-end audit adjustments and the absence of footnotes).

2. The calculations set forth in Attachment 1 are computations of the financial covenants set forth in Article VI of the Credit Agreement calculated or derived from the financial statements referenced in clause 1 above in accordance with the terms of the Credit Agreement.

3. The Borrower and its Subsidiaries have complied with all the terms and provisions of Section 3.02(a) of the Sarbanes-Oxley Act as in effect on the date hereof.

4. Based upon a review of the activities of the Borrower and its Subsidiaries and the financial statements attached hereto during the period covered thereby, as of the date hereof, there exists no Default or Event of Default.

[5. Attached hereto are updates to the schedules to that certain Second Amended and Restated Security Agreement, dated as of January 28, 2014 (as amended and in effect on the date hereof), as such schedules are required to be updated pursuant to the terms thereof.][**INCLUDE IF APPLICABLE**]

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Name: Terry A. Hart  
Title: Chief Financial Officer

Attachment 1 to Compliance Certificate

**Minimum Asset Coverage Ratio**

(dollars in 000's)

Total Assets at [____], [____]	(A)
LESS: all liabilities (other than Indebtedness, Other Senior Secured Indebtedness and all obligations and liabilities to purchase, redeem, retire or otherwise acquire for value <u>preferred equity of the Borrower and its Subsidiaries</u> )	(B)
Asset Coverage Ratio Numerator	(A) – (B) = (C)
Indebtedness under the Credit Agreement	(D)
Other Senior Secured Indebtedness	(E)
Any other Indebtedness of Borrower and its Subsidiaries (excludes all obligations and liabilities to purchase, redeem, <u>retire or otherwise acquire for value preferred equity</u> )	(F)
Asset Coverage Ratio Denominator	(D) + (E) + (F) = (G)
<b>Asset Coverage Ratio at [____], [____]</b>	<b>(C) divided by (G) = (H)</b>

**COMPLIANT      Asset Coverage Ratio at all times must be at least 3.00 : 1.00.**

Attachment 1 to Compliance Certificate

**Minimum Liquidity**

(dollars in 000's)

Revolving Credit Exposure Amount at [____], [____]	(A)	
outstanding Term Loans at [____], [____]	(B)	
outstanding Other Senior Secured Indebtedness at [____], [____]	(C)	
<u>LESS: Cash and Cash Equivalents</u>	(D)	
Adjusted Credit Exposure Amount		(A) + (B) + (C) - (D) = (E)
Borrowing Base at [____], [____]	(F)	
<u>LESS: Cash and Cash Equivalents</u>	(D)	
Adjusted Borrowing Base Amount		(F) - (D) = (G)
<b>Percentage of Adjusted Exposure Amount to Adjusted Borrowing Base</b>		
at [____], [____]	<b>(E) divided by (G) = (H)</b>	<b>[_]%</b>

**COMPLIANT**      Adjusted Exposure Amount is not greater than 90% of Adjusted Borrowing Base.



Attachment 1 to Compliance Certificate

**Total Leverage Asset Coverage Ratio**

(dollars in 000's)

Total Assets at [____], [____]	(A)
LESS: all liabilities other than Indebtedness, Other Senior Secured Indebtedness and all obligations and liabilities to purchase, redeem, retire or otherwise acquire for value <u>Preferred Stock</u>	(B)
Total Leverage Asset Coverage Ratio Numerator	(A) – (B) = (C)
Indebtedness under the Credit Agreement	(D)
Other Senior Secured Indebtedness	(E)
Any other Indebtedness of Borrower and its Subsidiaries	(F)
All obligations and liabilities to purchase, redeem, retire or <u>otherwise acquire for value Preferred Stock</u>	(G)
Total Leverage Asset Coverage Ratio Denominator	(D) + (E) + (F) + (G) = (H)
<b>Total Leverage Asset Coverage Ratio at [____], [____]</b>	<b>(C) divided by (H) = (I)    [ ]%</b>

**COMPLIANT            Total Leverage Asset Coverage Ratio at all times must be at least 2.25:1.00.**

**Exhibit 5.1(e)**

**Form of Borrowing Base Certificate**

**(See Attached)**

**EXHIBIT 5.1(e)**

**BORROWING BASE CERTIFICATE**

**KAYNE ANDERSON ENERGY DEVELOPMENT COMPANY**

**Date:** \_\_\_\_\_

This certificate is given by KAYNE ANDERSON ENERGY DEVELOPMENT COMPANY, a Maryland corporation (the "Borrower") pursuant to subsection 5.1(e) of that certain Second Amended and Restated Senior Secured Revolving Credit Agreement dated as of January 28, 2014 among Borrower, the Lenders from time to time party thereto, SunTrust Bank, as Administrative Agent for the Lenders, Citibank, N.A., as Syndication Agent, and UBS Securities LLC and The Bank of Nova Scotia, as Co-Documentation Agents (as such agreement has been or may be amended, restated, supplemented or otherwise modified from time to time the "Credit Agreement"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The officer executing this certificate is the Chief Financial Officer of the Borrower and as such is duly authorized to execute and deliver this certificate on behalf of Borrower. By executing this certificate such officer hereby certifies to Agent and Lenders that:

(a) Attached hereto as Schedule 1 is a calculation of the Borrowing Base for the Borrower as of the above date;

(b) based on such schedule, the Borrowing Base as the above date is:

\$ \_\_\_\_\_

*[Signature page to follow]*

**IN WITNESS WHEREOF**, the undersigned has executed and delivered this Certificate as of the date first set forth above.

**KAYNE ANDERSON ENERGY  
DEVELOPMENT COMPANY**

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

Name: Terry Hart

Title: Chief Financial Officer

**Schedule 1**  
**Borrowing Base Certificate**

**BORROWING BASE CALCULATION**

**KAYNE ANDERSON ENERGY DEVELOPMENT COMPANY**

Borrowing Base shall be equal to:	
1. Value of Portfolio Investments multiplied by the Advance Rates (see below)	\$
2. LESS: Value of Portfolio Investments subject to a Lock-Up agreement with remaining term of 90 days or less multiplied by 10% (included in 1 above) (see below)	\$
3. LESS: Value of Portfolio Investments subject to a Lock-Up agreement with remaining term of more than 90 days but less than or equal to 180 days multiplied by 20% (included in 1 above) (see below)	\$
4. LESS: Value of Portfolio Investments subject to a Lock-Up agreement with remaining term of more than 180 days multiplied by the Advance Rate (included in 1 above) (see below)	\$
5. LESS: Value of Portfolio Investments subject to a Right of First Offer that is for an Offer Period of more than 45 days but less than or equal to 90 days multiplied by 10% (included in 1 above) (see below)	\$
6. LESS: Value of Portfolio Investments subject to a Right of First Offer that is for an Offer Period of more than 90 days multiplied by the Advance Rates (included in 1 above) (see below)	\$
7. LESS: Value of Portfolio Investments multiplied by the percentage of the Portfolio Investment that can be restricted from sale by the operation of Tag Along Rights multiplied by the Advance Rates (included in 1 above) (see below)	\$
8. LESS: Value attributable to any single issuer of portfolio Investments in a consolidated group of corporations or other entities that exceeds (i) with respect to Portfolio Investments that constitute Quoted Securities, 12.5% of the Borrowing Base and (ii) with respect to Portfolio Investments that do not constitute Quoted Securities, 7.5% of the Borrowing Base (included in 1 above) (see below)	\$
9. LESS: Value of Portfolio Investments that exceed certain percentages of the Borrowing Base as set forth in Section 5.12(a) and (b) of the Credit Agreement	\$
<b>Borrowing Base</b>	<b>\$</b>

1. Value of Portfolio Investments multiplied by the Advance Rates

Portfolio Investments	Abbreviated	Value		Advance Rate		
Cash, Cash Equivalents and Short-Term U.S. Government Securities	cash	\$	multiplied by	100%	=	\$
Long-Term U.S. Securities	lt us govt	\$	multiplied by	95%	=	\$
Quoted Performing First Lien Bank Loans	q 1st	\$	multiplied by	80%	=	\$
Unquoted Performing First Lien Bank Loans	uq 1st	\$	multiplied by	70%	=	\$
Quoted Performing Second Lien Bank Loans	q 2nd	\$	multiplied by	70%	=	\$
Unquoted Performing Second Lien Bank Loans	uq 2nd	\$	multiplied by	60%	=	\$
Quoted Performing Unsecured Bank Loans	q unsec	\$	multiplied by	65%	=	\$
Unquoted Performing Unsecured Bank Loans	uq unsec	\$	multiplied by	55%	=	\$
Quoted Performing Non-Cash Pay Bank Loans	q non-cash loans	\$	multiplied by	55%	=	\$
Unquoted Performing Non-Cash Pay Bank Loans	uq non-cash loans	\$	multiplied by	45%	=	\$
Quoted Performing Cash Pay High Yield Securities	q cash pay hy	\$	multiplied by	60%	=	\$
Unquoted Performing Cash Pay High Yield Securities	uq cash pay hy	\$	multiplied by	50%	=	\$
Quoted Performing Non-Cash Pay High Yield Securities	q non-cash hy	\$	multiplied by	50%	=	\$
Unquoted Performing Non-Cash Pay High Yield Securities	uq non-cash hy	\$	multiplied by	40%	=	\$
Quoted Performing Public MLP Common and Preferred Units	q mlp	\$	multiplied by	50%	=	\$
Unquoted Performing Public MLP Common and Preferred Units	uq mlp	\$	multiplied by	45%	=	\$
Unquoted Performing Private MLP Common and Preferred Units	uq pr mlp	\$	multiplied by	20%	=	\$
Quoted Performing Common Equity, Warrants and MLP Subordinated Units	q common	\$	multiplied by	45%	=	\$
Unquoted Performing Common Equity, Warrants and MLP Subordinated Units	uq common	\$	multiplied by	40%	=	\$
Quoted Non-Performing First Lien Bank Loans	q non-perf 1st	\$	multiplied by	35%	=	\$
Quoted Non-Performing Second Lien Bank Loans	q non-perf 2nd	\$	multiplied by	25%	=	\$
Quoted Non-Performing Cash Pay High Yield Securities	q non-perf hy	\$	multiplied by	25%	=	\$

Schedule 1 to Borrowing Base Certificate

Quoted Non-Performing Unsecured Bank Loans	q non-perf unsec	\$	multiplied by	20%	=	\$
Quoted Non-Performing Public MLP Common and Preferred Units	q non-perf mlp	\$	multiplied by	35%	=	\$
Non-Performing Other	q non-perf other	\$	multiplied by	0%	=	\$
<b>The sum of the Advance Rates of the Value of each Portfolio Investment</b>	(The sum of lines 1-25 above)		multiplied by		=	\$

2. Value of Portfolio Investments subject to a Lock-Up agreement with remaining term of 90 days or less multiplied by 10%

Portfolio Investment	Advance Rate category	Value of Portfolio Investment	multiplied by 10%		Value of Portfolio Investment multiplied by 10%
			10%		\$
			10%		\$
			10%		\$
<b>Total</b>					\$

3. Value of Portfolio Investments subject to a Lock-Up agreement with remaining term of more than 90 days but less than 180 days multiplied by 20%

	Portfolio Investment	Advance Rate category	Value of Portfolio Investment	multiplied by 20%		Value of Portfolio Investment multiplied by 20%
31				20%		\$
32				20%		\$
33						
34	<b>Total</b>					\$

4. Value of Portfolio Investments subject to a Lock-Up agreement with remaining term of more than 180 days multiplied by the Advance Rate

	Portfolio Investment	Advance Rate category	Value of Portfolio Investment	multiplied by the Advance Rate		Value of Portfolio Investment multiplied by the Advance Rate



35			\$	0%		\$
36						
37	<b>Total</b>					\$

5. Value of Portfolio Investments subject to a Right of First Offer that is for an Offer Period of more than 45 days but less than 90 days multiplied by 10%

	Portfolio Investment	Advance Rate category	Value of Portfolio Investment	multiplied by 10%		Value of Portfolio Investment multiplied by 10%
38			\$	0%		\$
39	<b>Total</b>					

6. Value of Portfolio Investments subject to a Right of First Offer that is for an Offer Period of more than 90 days multiplied by the Advanced Rates

	Portfolio Investment	Advance Rate category	Value of Portfolio Investment	multiplied by the Advance Rate		Value of Portfolio Investment multiplied by the Advance Rate
40			\$	0%		\$
41	<b>Total</b>					

7. Value of Portfolio Investments that can be restricted from sale by the operation of a Tag Along Right multiplied by the Advance Rates

	Portfolio Investment	Advance Rate category	Value of Portfolio Investment	Percentage of Portfolio Investment that can be restricted from sale by the operation of Tag Along Rights	Value of Portfolio Investment that can be restricted from sale by the operation of Tag Along Rights	multiplied by Advance Rate	Value of Portfolio Investment that can be restricted from sale by the operation of Tag Along Rights multiplied by Advance Rate
42		uq pr mlp	\$	0%		20%	\$
43	<b>Total</b>						

8. Value attributable to any single issuer of portfolio Investments in a consolidated group of corporations or other entities that exceeds:

(i) with respect to Portfolio Investments that constitute Quoted Securities, 12.5% of the Borrowing Base

	Portfolio Investment	Advance Rate category	Contribution to Borrowing Base prior to 12.5%		12.5% limitation		Value of Portfolio Investments that exceed the 12.5% limitation
44		q mlp	\$				\$
45		q mlp	\$				\$
46		q mlp	\$				\$
47	<b>Total</b>						\$

(ii) with respect to Portfolio Investments that do not constitute Quoted Securities, 7.5% of the Borrowing Base

	Portfolio Investment	Advance Rate category	Contribution to Borrowing Base prior to 7.5%		7.5% limitation		Value of Portfolio Investments that exceed the 7.5% limitation
48		q mlp	\$				\$
49		q mlp	\$				\$
50		q mlp	\$				\$
51	<b>Total</b>						\$

9. Value of Portfolio Investments that exceed certain percentages of the Borrowing Base as set forth in Section 5.12(a) and (b) of the Credit Agreement

52	the portion of the Borrowing Base attributable to the aggregate amount of Non-Performing Bank Loans, Non-Performing High Yield	Sum of lines: 20 21 22 23					\$
----	--	---------------------------------------	--	--	--	--	----

	Securities and Warrants				=	
53	10% borrowing base limitation	(Borrowing Base Above) \$	multiplied by	10%	=	\$
54	Adjustment to Borrowing Base if line 52 is greater than 53, if not, then zero	amount from line 52 \$	minus	amount from line 53 \$	=	\$

55	the portion of the Borrowing Base attributable to the aggregate amount of Private MLP Common and Preferred Units	Amount from line: 17			=	\$
56	25% borrowing base limitation	(Borrowing Base from page 1) \$	multiplied by	25%	=	\$
57	Adjustment to Borrowing Base if line 51 is greater than 52, if not, then zero	amount from line 55 \$	minus	amount from line 56 \$	=	\$
58	Total adjustment to Borrowing Base if lines 54 or 57 are greater than zero, if not, then zero	Amounts from lines 54 57 \$			=	\$

**Exhibit 7.1(g)**

**Form of Intercreditor Agreement**

**(See Attached)**

COLLATERAL AGENCY  
AND INTERCREDITOR AGREEMENT

dated as of [\_\_\_\_\_, 2014]

by and among

SUNTRUST BANK,  
as Bank Security Agent,

[\_\_\_\_\_]   
as Initial Pari Passu Debt Security Agent,

each Additional Pari Passu Debt Security Agent that may become a party hereto from time to time,

and

[\_\_\_\_\_]   
as Collateral Agent

THIS COLLATERAL AGENCY AND INTERCREDITOR AGREEMENT  
RELATES TO CERTAIN INDEBTEDNESS OF  
KAYNE ANDERSON ENERGY DEVELOPMENT COMPANY

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## EXHIBITS

- Exhibit A - Form of Custody Liquidation Notice
- Exhibit B - Form of Instruction Letter
- Exhibit C - Form of Other Liquidation Notice
- Exhibit D - Form of Joinder Agreement
- Exhibit E - Form of Control Agreement

## ANNEXES

- Annex A - Copy of each Loan Document
- Annex B - Copy of Initial Pari Passu Debt Documents



## COLLATERAL AGENCY AND INTERCREDITOR AGREEMENT

This **COLLATERAL AGENCY AND INTERCREDITOR AGREEMENT**, dated as of [\_\_\_\_\_, 2014], is entered into by and among SUNTRUST BANK, in its capacity as Bank Security Agent (as defined below), [\_\_\_\_\_] in its capacity as the Initial Pari Passu Debt Security Agent (as defined below), each Additional Pari Passu Debt Security Agent (as defined below) that may become a party hereto from time to time, and [\_\_\_\_\_] in its capacity as collateral agent for the Secured Parties (as defined below) (in such capacity, and including its successors and assigns from time to time, the “Collateral Agent”).

### RECITALS

WHEREAS, Kayne Anderson Energy Development Company, a Maryland corporation (the “Company”), and the several lending institutions or entities from time to time parties thereto (the “Banks”), and SunTrust Bank, in its capacity as administrative agent for the Banks (in such capacity, and including its successors and assigns from time to time, the “Bank Security Agent”), have entered into that certain Second Amended and Restated Credit Agreement, dated as of January 28, 2014, (as amended, restated, supplemented, replaced or otherwise modified from time to time, the “Credit Agreement”), which provides, among other things, for the borrowing of loans by the Company from the Banks;

WHEREAS, pursuant to the Amended and Restated Security Agreement, dated as of January 28, 2014, between the Company and the Bank Security Agent, (as amended, restated, supplemented, replaced or otherwise modified from time to time, the “Bank Security Agreement”), the Company granted a security interest in the Collateral (as defined therein) to the Bank Security Agent, for its benefit and for the benefit of the Collateral Agent and the Banks, as security for all of the Company’s obligations under the Loan Documents (as defined below);

WHEREAS, the Company entered into that certain [\_\_\_\_\_] dated [\_\_\_\_\_, 20\_\_], (as amended, restated, supplemented or otherwise modified from time to time, the “Initial Pari Passu Debt Agreement”), pursuant to which the Company issued its [\_\_\_\_\_] (in each case, as the same be amended, restated, supplemented, replaced or otherwise modified from time to time, collectively, the “Initial Pari Passu Debt”);

WHEREAS, the Company and the Initial Pari Passu Debt Holders (as defined below) have entered into that certain [Agency Agreement,] dated as of [\_\_\_\_\_, 20\_\_] (as amended, restated, supplemented, replaced or otherwise modified from time to time, the “Initial Pari Passu Debt Agency Agreement”), with [\_\_\_\_\_] appointing [\_\_\_\_\_] as the security agent for the Initial Pari Passu Debt Holders (in such capacity, the “Initial Pari Passu Debt Security Agent”);

WHEREAS, pursuant to the Security Agreement, dated as of [\_\_\_\_\_, 20\_\_] (as amended, restated, supplemented, replaced or otherwise modified from time to time, the “Initial Pari Passu Debt Security Agreement”) between the Company and the Initial Pari

Passu Debt Security Agent, the Company granted a security interest in the Collateral (as defined therein) to the Initial Pari Passu Debt Security Agent for its benefit and for the benefit of the Collateral Agent and the Initial Pari Passu Debt Holders (as defined below) as security for all of the Company's obligations under the Initial Pari Passu Debt Documents (as defined below); and

WHEREAS, the Company may in the future enter into one or more loan, credit or note purchase agreements pursuant to which the Company shall borrower secured revolving or term loans, issue senior secured notes or incur other secured indebtedness and, upon the execution and delivery of a Joinder Agreement (as defined below) with respect thereto, such loan, credit or note purchase agreements and such senior secured loans, notes or other indebtedness, and the obligations thereunder, would be subject to the terms of this Agreement;

NOW, THEREFORE, in consideration of the premises and agreements, provisions, mutual covenants and obligations herein contained, each of the Bank Security Agent (on behalf of itself, each Bank, and each other holder of any Bank Obligations), each Pari Passu Debt Security Agent (on behalf of itself and each Applicable Pari Passu Debt Party) and the Collateral Agent agrees as follows:

## **ARTICLE 1. DEFINITIONS.**

Section 1.1 Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

“Additional Pari Passu Debt Security Agent” means each Person which is the “Additional Pari Passu Debt Security Agent” as defined in a Joinder Agreement.

“Additional Pari Passu Debt” means the “Additional Pari Passu Debt” as defined in a Joinder Agreement.

“Affiliate” means as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether by ownership of capital stock, contract or otherwise.

“Agents” means the Bank Security Agent, each Pari Passu Debt Security Agent and the Collateral Agent.

“Agreement” means this Collateral Agency and Intercreditor Agreement.

“Applicable Joinder Agreement” means, with respect to each Additional Pari Passu Debt Security Agent, the Joinder Agreement pursuant to which such Additional Pari Passu Debt Security Agent became a party to this Agreement.

“Applicable Agency Agreement” means (a) with respect to the Initial Pari Passu Debt Security Agent, the Initial Pari Passu Debt Agency Agreement, and (b) with respect to each Additional Pari Passu Debt Security Agent, the “Additional Agency Agreement” as defined in the Applicable Joinder Agreement.

“Applicable Pari Passu Debt Documents” means (a) with respect to the Initial Pari Passu Debt Security Agent, the Initial Pari Passu Debt Documents, and (b) with respect to each Additional Pari Passu Debt Security Agent (i) each of the following (in each case as defined in the Applicable Joinder Agreement): the Additional Pari Passu Debt Agreement, the Additional Pari Passu Debt, the Additional Agency Agreement and the Additional Security Agreement, and (ii) the other Pari Passu Debt Documents relating to the documents referred to in clause (i) immediately above.

“Applicable Pari Passu Debt Obligations” means, with respect to each Pari Passu Debt Security Agent, the Pari Passu Debt Obligations arising under the Applicable Pari Passu Debt Documents.

“Applicable Pari Passu Debt Party” means (a) with respect to the Initial Pari Passu Debt Security Agent, each Initial Pari Passu Debt Holder and each other holder of any Initial Pari Passu Debt Obligation, and (b) with respect to each Additional Pari Passu Debt Security Agent, such Additional Pari Passu Debt Security Agent, each holder of the Additional Pari Passu Debt (as defined in the Applicable Joinder Agreement), and each holder of any Applicable Pari Passu Debt Obligation.

“Applicable Pari Passu Debt” means (a) with respect to the Initial Pari Passu Debt Security Agent, the Initial Pari Passu Debt, and (b) with respect to each Additional Pari Passu Debt Security Agent, the “Additional Pari Passu Debt” as defined in the Applicable Joinder Agreement.

“Bank Obligations” means all obligations of the Company to the Bank Parties under the Loan Documents, in each case whether on account of principal, interest, premium, fees, indemnities, costs, expenses, Hedging Obligations, Bank Product Obligations or otherwise (including all fees and disbursements of counsel to the Bank Security Agent and the Banks that are required to be paid by the Company pursuant to the terms of any of the foregoing agreements), in each case (i) of every nature or kind, (ii) whether fixed or contingent, (iii) whether matured or unmatured, (iv) whether direct or indirect, (v) whether now existing or hereafter created, acquired or incurred, (vi) whether or not allowed or allowable in an Insolvency or Liquidation Proceeding, (vii) whether relating to payment or performance, and (viii) including interest accruing at the then applicable rate provided in the applicable Loan Document after the maturity of the relevant Bank Obligations and any Post- Petition Interest.

“Bank Parties” means the Bank Security Agent, each Bank, and each other Person to whom the Company is obligated under the Credit Agreement, any promissory note issued under the Credit Agreement, or the Bank Security Agreement.

“Bank Product Obligations” has the meaning set forth in the Credit Agreement.

“Bank Security Agent” has the meaning set forth in the recitals to this Agreement.

“Bank Security Agreement” has the meaning set forth in the recitals to this Agreement.

“Bankruptcy Code” means Title II of the United States Code entitled “Bankruptcy”, as now and hereafter in effect, or any successor statute.

“Bankruptcy Law” means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors.

“Banks” has the meaning set forth in the recitals to this Agreement.

“Business Day” means any day (other than a Saturday or Sunday) on which (a) commercial banks are open for the purpose of transacting business in Houston, Texas and New York, New York and (b) the New York Stock Exchange is open.

“Cause Event” has the meaning set forth in Section 2.7(b).

“Collateral” means all property of the Company, now owned or hereafter acquired, upon which a Lien is purported to be created by a Security Agreement.

“Collateral Agent” has the meaning set forth in the preamble to this Agreement.

“Collection Account” means a deposit account to be established by the Collateral Agent at JPMorgan Chase Bank, N.A. entitled “Kayne Anderson Energy Development-Collection Account”.

“Commitments” means the commitment of any Bank to make any loan under the Loan Documents.

“Company” has the meaning set forth in the recitals to this Agreement.

“Control Agreement” means that certain Control Agreement, dated as of the date hereof, among the Company, the Collateral Agent, and JPMorgan Chase Bank, N.A., in its capacity as custodian under the Custody Agreement (the “Intermediary”), in the form of Exhibit E hereto, as the same may be amended, restated, replaced, modified, supplemented or in effect from time to time.

“Credit Agreement” has the meaning set forth in the recitals to this Agreement.

“Custody Agreement” means that certain Global Custody Agreement, dated as of February \_\_, 2014, between the Company and JPMorgan Chase Bank, N.A., as custodian thereunder, as the same may be amended, restated, replaced, modified, supplemented or in effect from time to time.

“Custody Liquidation Notice” means a notice in substantially the form of Exhibit A hereto.

“Deemed Insolvency Date” means the date that is fourteen (14) days immediately prior to the commencement of any Insolvency or Liquidation Proceeding in respect of the Company.

“Deemed Insolvency Period” means the period (x) commencing on the Deemed Insolvency Date (so long as none of the events described in the definition of Liquidation Payment shall have occurred) and (y) ending on the earliest to occur of any of the events described in the definition of Liquidation Payment.

“Deemed Bank Preference Payment” means the excess, if any, of (a) the sum of all payments received by the Bank Parties in reduction of the Bank Obligations during the Deemed Insolvency Period, over (b) the principal amount of all Loans made during the Deemed Insolvency Period pursuant to the Loan Documents.

“Deemed Pari Passu Debt Preference Payment” means, with respect to any single group of Applicable Pari Passu Debt Parties, the excess, if any, of (a) the sum of all payments received by such Applicable Pari Passu Debt Parties in reduction of the Applicable Pari Passu Debt Obligations during the Deemed Insolvency Period, over (b) the sum, without duplication of (i) the principal amount of all loans made by such Applicable Pari Passu Debt Parties to the Company during the Deemed Insolvency Period pursuant to the Applicable Pari Passu Debt Documents, and (ii) the face amount of all securities purchased by such Applicable Pari Passu Debt Parties and issued by the Company during the Deemed Insolvency Period pursuant to the Applicable Pari Passu Debt Documents.

“Deemed Preference Payment” means a Deemed Bank Preference Payment or a Deemed Pari Passu Debt Preference Payment. Each Deemed Preference Payment, if any, shall be deemed to have been made on the third Business Day following the end of the Deemed Insolvency Period.

“Delivery Instructions” means, with respect to any Collateral referred to in Section 7.1, any reasonable instruction with respect thereto given by a Security Agent to the Collateral Agent for the ultimate purpose of assisting such Security Agent in connection with any foreclosure or other liquidation of such Collateral by such Security Agent, or any other action by such Security Agent for the ultimate purpose of exercising such Security Agent’s rights and remedies under the applicable Security Agreement, including (a) assembling such Collateral, and exhibiting such Collateral to the Secured Parties and any actual or potential transferees thereof, in each case at such reasonable time or times and in such reasonable place or places as such Security Agent may direct, and (b) delivering or otherwise transferring any such Collateral, without representation or warranty, to any purchaser thereof.

“Discharge of Applicable Pari Passu Debt Obligations” means, except as otherwise provided in Section 10.1, with respect to each Pari Passu Debt Security Agent, the payment in full in cash of all of the Applicable Pari Passu Debt Obligations.

“Discharge of Bank Obligations” means, except as otherwise provided in Section 10.1, (a) the payment in full in cash of all of the Bank Obligations, and (b) the termination or other expiration of the Commitments.

“Discharge of Secured Obligations” means, except as otherwise provided in Section 10.1, (a) the Discharge of Bank Obligations, and (b) the payment in full in cash of all of the Pari Passu Debt Obligations.

“Entitlement Order” means an instruction (within the meaning of Section 9-104(a)(2) of the UCC), an entitlement order (within the meaning of Section 8-106(d)(2) of the UCC), or a direction to apply any value (within the meaning of Section 9-106(b)(2) of the UCC).

“Event of Default” means (a) an “Event of Default” under and as defined in the Credit Agreement, or (b) an “Event of Default” under and as defined in any Pari Passu Debt Agreement.

“Excepted Payment” means any of the following payments received by a Secured Party in respect of any Secured Obligation: (a) any payment received from the Collateral Agent pursuant to Section 8.2, (b) any payment received by a Bank from the Bank Security Agent (except to the extent the Bank Security Agent shall be deemed to have received a Liquidation Payment and paid all or any portion thereof to one or more of the Banks), and (c) any payment received by a Pari Passu Debt Holder from a Pari Passu Debt Security Agent (except to the extent such Pari Passu Debt Security Agent shall be deemed to have received a Liquidation Payment and paid all or any portion thereof to one or more of the Pari Passu Debt Holders).

“Financing Documents” means collectively, each Loan Document, each Pari Passu Debt Document, this Agreement and the Control Agreement.

“Hedging Obligations” has the meaning set forth in the Credit Agreement.

“Initial Pari Passu Debt Agency Agreement” has the meaning set forth in the recitals to this Agreement.

“Initial Pari Passu Debt Documents” means (a) the Initial Pari Passu Debt Agreement, the Initial Pari Passu Debt, the Initial Pari Passu Debt Agency Agreement, and the Initial Pari Passu Debt Security Agreement, and (b) the other Pari Passu Debt Documents relating to the documents referred to in clause (a) immediately above.

“Initial Pari Passu Debt Obligations” means the Pari Passu Debt Obligations arising under the Initial Pari Passu Debt Documents.

“Initial Pari Passu Debt Agreement” has the meaning set forth in the recitals to this Agreement.

“Initial Pari Passu Debt Security Agent” has the meaning set forth in the recitals to this Agreement.

“Initial Pari Passu Debt Security Agreement” has the meaning set forth in the recitals to this Agreement.

“Initial Pari Passu Debt Holders” means, at any time, the holders of the Initial Pari Passu Debt at such time.

“Initial Pari Passu Debt” has the meaning set forth in the recitals to this Agreement.

“Insolvency or Liquidation Proceeding” means:

- (a) any voluntary or involuntary case or proceeding under any Bankruptcy Law with respect to the Company;
- (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to the Company or with respect to a material portion of its property;
- (c) any liquidation, dissolution, reorganization or winding up of the Company whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or
- (d) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of the Company.

“Instruction Letter” means a letter in substantially the form of Exhibit B hereto.

“Intermediary” has the meaning set forth in the defined term “Control Agreement”.

“Joinder Agreement” means a joinder agreement substantially in the form of Exhibit D hereto that shall have been executed and delivered by the Collateral Agent, the Company, and the “Additional Pari Passu Debt Security Agent” as therein defined.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing).

“Liquidation Payment” means any payment (including by offset or setoff) received by a Secured Party in respect of any Secured Obligation (a) after the commencement of any Insolvency or Liquidation Proceeding in respect of the Company, (b) in connection with any foreclosure (whether strict, non-judicial, judicial, voluntary or involuntary) on any Collateral, (c) after either any Loans or any Pari Passu Debt shall have become due and payable in full (as the result of an acceleration or termination (but not as the result of a scheduled payment at maturity)), or (d) after the Trigger Time, provided that the term “Liquidation Payment” shall not include any Excepted Payment.

“Loan” means any loan made to the Company under the Credit Agreement.

“Loan Documents” means the “Loan Documents” under and as such term is defined in the Credit Agreement, as the Credit Agreement or any such Loan Document may be amended, supplemented, renewed, extended or otherwise modified or Refinanced.

“Make-Whole Amount” means any make-whole or prepayment premium, any break-funding indemnity, or any similar amount.

“Notice of Default” has the meaning set forth in Section 2.4(a).

“Notice of Exclusive Control” means a “Notice of Exclusive Control” under and as such term is defined in the Control Agreement.

“Other Liquidation Notice” means a notice in substantially the form of Exhibit C hereto for the purpose of providing Delivery Instructions to the Collateral Agent.

“Pari Passu Debt” means the Initial Pari Passu Debt and the Additional Pari Passu Debt.

“Pari Passu Debt Agency Agreements” means (a) the Initial Pari Passu Debt Agency Agreement, and (b) each “Additional Agency Agreement” as defined in a Joinder Agreement.

“Pari Passu Debt Agreements” means (a) the Initial Pari Passu Debt Agreement, and (b) each “Additional Pari Passu Debt Agreement” as defined in a Joinder Agreement.

“Pari Passu Debt Documents” means the Pari Passu Debt Agreements, the Pari Passu Debt, the Pari Passu Debt Agency Agreements, the Pari Passu Debt Security Agreements, this Agreement, the Control Agreement, and any other documents that may be identified as such under the Pari Passu Debt Agreements from time to time, in each case as any such document may be amended, supplemented, renewed, extended or otherwise modified or Refinanced.

“Pari Passu Debt Holders” means, at any time, the holders or lenders, as applicable, of the outstanding Pari Passu Debt at such time.

“Pari Passu Debt Obligations” means all obligations of the Company to the Pari Passu Debt Parties under the Pari Passu Debt Documents, in each case whether on account of principal, interest, premium (including any Make-Whole Amount payable under any Pari Passu Debt Agreement), fees, indemnities, costs, expenses or otherwise (including all fees and disbursements of counsel to the Pari Passu Debt Security Agents and the Pari Passu Debt Holders that are required to be paid by the Company pursuant to the terms of any of the foregoing agreements), in each case (i) of every nature or kind, (ii) whether fixed or contingent, (iii) whether matured or unmatured, (iv) whether direct or indirect, (v) whether now existing or hereafter created, acquired or incurred, (vi) whether or not allowed or allowable in an Insolvency or Liquidation Proceeding, (vii) whether relating to payment or performance, and (viii) including interest accruing at the then applicable rate provided in the Applicable Pari Passu Debt Documents after the maturity of the relevant Pari Passu Debt Obligations and any Post-Petition Interest.

“Pari Passu Debt Parties” means each Pari Passu Debt Security Agent, each Pari Passu Debt Holder, and each other Person to whom the Company is obligated under a Pari Passu Debt Agreement, or any Pari Passu Debt Security Agreement.

“Pari Passu Debt Security Agent” means (a) the Initial Pari Passu Debt Security Agent, and (b) each “Additional Pari Passu Debt Security Agent” as defined in a Joinder Agreement.



“Pari Passu Debt Security Agreements” means (a) the Initial Pari Passu Debt Security Agreement, and (b) each “Additional Pari Passu Debt Security Agreement” as defined in a Joinder Agreement.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

“Post-Petition Interest” means any interest or entitlement to fees or expenses or other charges that accrues after the commencement of any Insolvency or Liquidation Proceeding, whether or not allowed or allowable in any such Insolvency or Liquidation Proceeding.

“Recovery” has the meaning set forth in Section 10.1.

“Refinance” means, in respect of any indebtedness, to refinance, extend, renew, defease, replace, refund or repay, or to issue other indebtedness, in exchange or replacement for, such indebtedness. “Refinanced” and “Refinancing” shall have correlative meanings.

“Related Secured Party” means (a) with respect to the Bank Security Agent, each Bank Party, and (b) with respect to each Pari Passu Debt Security Agent, each Applicable Pari Passu Debt Party.

“Secured Obligations” means, collectively, the Bank Obligations and the Pari Passu Debt Obligations.

“Secured Parties” means, at any time, the holders of Secured Obligations at such time, including, the Bank Security Agent, each Pari Passu Debt Security Agent, the Collateral Agent, the Banks and the Pari Passu Debt Holders.

“Security Agents” means the Bank Security Agent and each Pari Passu Debt Security Agent.

“Security Agreements” means the Bank Security Agreement and each Pari Passu Debt Security Agreement.

“Trigger Time” means, with respect to any Secured Party, in the event any Security Agent has delivered a Notice of Default to the Collateral Agent, (a) with respect to such Security Agent and each Related Secured Party thereof, the time such Notice of Default was delivered to the Collateral Agent, (b) with respect to the other Security Agents and each Related Secured Party thereof, (i) in the event such Security Agent shall have received notice thereof from the Collateral Agent pursuant to Section 2.4(a) or Section 6.1, on or before 1:00 p.m., Eastern time, on any Business Day, 3:00 p.m., Eastern time, on such Business Day, or (ii) in all other events, 11:00 a.m., Eastern time, on the Business Day immediately succeeding the day such Security Agent shall have received such notice, and (c) with respect to the Collateral Agent (i) in the event the Collateral Agent shall have received such Notice of Default on or before 1:00 p.m., Eastern time, on any Business Day, 3:00 p.m., Eastern time, on such Business Day, or (ii) in all other events, 11:00 a.m., Eastern time, on the Business Day immediately succeeding the day the Collateral Agent shall have received such Notice of Default.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York or, when the context implies, the Uniform Commercial Code as in effect from time to time in any other applicable jurisdiction.

Section 1.2 Other Definitional Provisions; Actions of Security Agents.

(a) (i) As used herein and in any certificate or other document made or delivered pursuant hereto, (i) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”, and (ii) references to agreements shall, unless otherwise specified, be deemed to refer to such agreements as amended, supplemented, restated or otherwise modified from time to time.

(b) The words “hereof”, “herein” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Exhibit and Annex references are to this Agreement unless otherwise specified.

(c) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(d) Notwithstanding anything to the contrary contained in this Agreement, the parties hereto agree that (x) the Bank Security Agent will have no obligation to act or refrain from acting hereunder (or any liability therefor) except at the direction of the Required Lenders (as defined in the Credit Agreement) in accordance with the Loan Documents, and (y) no Pari Passu Debt Security Agent will have any obligation to act or refrain from acting hereunder (or any liability therefor) except at the direction of the [Required Holders] (as defined in the applicable Pari Passu Debt Agreement) in accordance with the Applicable Agency Agreement.

**ARTICLE 2. COLLATERAL AGENT.**

Section 2.1 Appointment. Each of the Bank Security Agent (on behalf of each Bank Party) and each Pari Passu Debt Security Agent (on behalf of, and as directed by, each Applicable Pari Passu Debt Party) hereby (a) appoints [\_\_\_\_\_] as Collateral Agent hereunder and authorizes [\_\_\_\_\_] to act as Collateral Agent in accordance with the terms hereof, and (b) irrevocably authorizes the Collateral Agent to take such action on their behalf and to exercise such powers, rights and remedies hereunder as are specifically delegated or granted to the Collateral Agent by the terms hereof, together with such powers, rights and remedies as are reasonably incidental thereto. The Collateral Agent hereby agrees to act in its capacity as such upon the express terms and conditions contained herein. In performing its functions and duties hereunder, the Collateral Agent shall act solely as an agent of the Secured Parties. The Collateral Agent shall have only those duties and responsibilities that are expressly specified herein. The Collateral Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. The Collateral Agent shall not have, by reason hereof, a fiduciary relationship in respect of any Secured Party, and nothing herein, expressed or implied, is intended to or shall be so construed as to impose upon the Collateral Agent any obligations in respect hereof except as expressly set forth herein. Notwithstanding anything to the contrary

contained in this Agreement, no Security Agent shall be responsible for the payment of any fees, expenses or indemnities to the Collateral Agent or its successors or assigns.

Section 2.2 Delegation of Duties. The Collateral Agent may execute any of its duties under this Agreement by or through agents or attorneys-in-fact and shall be entitled to advice of counsel (which may be counsel to the Company or any Secured Party) and other consultants or experts of its choice concerning all matters pertaining to such duties. The Collateral Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact selected by it with reasonable care.

Section 2.3 Exculpatory Provisions.

(a) Neither the Collateral Agent nor any of its officers, partners, directors, employees or agents shall be liable to the Secured Parties for any action taken or omitted by the Collateral Agent under or in connection herewith except to the extent caused by the Collateral Agent's gross negligence or willful misconduct, as determined by the final non-appealable decision of a court of competent jurisdiction. The Collateral Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or from the exercise of any power, discretion or authority vested in it hereunder unless and until the Collateral Agent shall have received instructions in respect thereof from the Security Agents and, upon receipt of such instructions, the Collateral Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) the Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, notice, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for the Company or any Secured Party), accountants, experts and other professional advisors selected by it; and (ii) no Secured Party shall have any right of action whatsoever against the Collateral Agent as a result of the Collateral Agent acting or (where so instructed) refraining from acting hereunder in accordance with the instructions of the Security Agents. Notwithstanding any other provision of this Agreement to the contrary, the Collateral Agent shall be under no obligation to take any action pursuant to any request or direction of any Security Agent entitled to give such request or instruction if the Collateral Agent shall receive conflicting direction from any other Security Agent to the extent entitled to give such request or instruction; provided that the Collateral Agent will follow the directions of the Security Agents.

(b) Beyond the exercise of reasonable care in the custody thereof and as otherwise specifically set forth herein, the Collateral Agent shall not have any duty as to any of the Collateral in its possession or control or in the possession or control of any agent or bailee thereof or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and the Collateral Agent shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest in the Collateral. The Collateral Agent shall not be liable or responsible for any loss or diminution in the value of any of the Collateral.

(c) The Collateral Agent shall not be responsible for (i) the existence, genuineness or value of any of the Collateral, (ii) the validity, perfection, priority or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, except to the extent such action or omission constitutes gross negligence or willful misconduct, as determined by the final non-appealable decision of a court of competent jurisdiction, on the part of the Collateral Agent, (iii) the validity or sufficiency of the Collateral, (iv) the validity of the title of the Company to the Collateral, (v) insuring the Collateral, (vi) the payment of taxes, charges, assessments or Liens upon the Collateral, or (vii) the maintenance of the Collateral.

Section 2.4 Notice of Default: Notice of Discharge of Secured Obligations.

(a) The Collateral Agent shall be deemed not to have actual, constructive, direct or indirect, knowledge or notice of the occurrence of any Event of Default unless the Collateral Agent has received written notice thereof from a Security Agent (i) referring to this Agreement, (ii) referring to the applicable document or documents governing such Event of Default, (iii) stating that an “Event of Default” has occurred thereunder, and (iv) stating that such notice is a “Notice of Default” hereunder. In the event that the Collateral Agent receives such a written notice from a Security Agent, the Collateral Agent shall promptly send a copy thereof to each other Security Agent.

(b) The Collateral Agent shall be deemed not to have actual, constructive, direct or indirect, knowledge or notice that there has been a Discharge of Secured Obligations unless the Collateral Agent shall have received written notice from (i) the Bank Security Agent referring to this Agreement and certifying that there has been a Discharge of Bank Obligations, and (ii) each Pari Passu Debt Security Agent referring to this Agreement and certifying that there has been a Discharge of Applicable Pari Passu Debt Obligations. In the event that the Collateral Agent receives such a written notice from a Security Agent, the Collateral Agent shall give notice thereof to the other Security Agents.

Section 2.5 Non-Reliance on Collateral Agent and Other Secured Parties.

(a) The Bank Security Agent (on behalf each Bank Party) and each Pari Passu Debt Security Agent (on behalf of each Applicable Pari Passu Debt Party): (i) expressly acknowledges that neither the Collateral Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by the Collateral Agent hereinafter taken shall be deemed to constitute any representation or warranty by the Collateral Agent to any such Person, and (ii) represents and warrants to the Collateral Agent that it has made its own independent investigation of the financial condition and affairs of the Company in connection with its decision to extend credit to the Company and that it has made and shall continue to make its own appraisal of the creditworthiness of the Company.

(b) The Collateral Agent shall not be responsible to any Secured Party for (i) the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or of any other Financing Document, (ii) any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made

by or on behalf of the Company to any Secured Party, (iii) the financial condition or business affairs of the Company or any other Person liable for the payment of any Secured Obligations, (iv) except to the extent otherwise expressly set forth herein with respect to this Agreement, ascertaining or inquiring as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Financing Documents or as to the existence or possible existence of any Event of Default, or making any disclosures with respect to the foregoing. Nothing in this Section 2.5(b) shall be construed to absolve the Collateral Agent for any liability arising out of any breach by it of any representation, warranty or covenant expressly made by it hereunder.

Section 2.6 Collateral Agent in Individual Capacity. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, the Collateral Agent in its individual capacity as a Secured Party hereunder. With respect to Secured Obligations made or renewed by it or any of its Affiliates, the Collateral Agent and its respective Affiliates shall have the same rights and powers under this Agreement and the other Financing Documents as any Secured Party, and may exercise the same as though the Collateral Agent was not the Collateral Agent, and the term “Secured Party” shall (to the extent applicable), unless the context clearly otherwise indicates, include the Collateral Agent in its individual capacity.

Section 2.7 Successor Collateral Agent.

(a) [ ] may resign as the Collateral Agent upon 30 days’ prior written notice to each Security Agent. If [ ] should resign as Collateral Agent, the Collateral Agent shall appoint a successor agent at the direction of the Security Agents, whereupon such successor agent shall succeed to the rights, powers and duties of the Collateral Agent. If no successor agent has accepted appointment as Collateral Agent by the date that is 30 days following [ ] notice of resignation, [ ] resignation shall nevertheless become effective upon written notice to that effect by [ ] to each Security Agent.

(b) [ ] may be removed as the Collateral Agent (i) at any time, with or without cause, by the Security Agents, or (ii) if the Collateral Agent shall have breached any representation, warranty or covenant made by it hereunder in any material respect that shall not have been remedied by the Collateral Agent (each a “Cause Event”), by any Security Agent, and such removal shall not be effective unless and until a successor Collateral Agent shall have been appointed in accordance herewith and shall have accepted such appointment, provided that if a Cause Event shall have occurred and be continuing and any Security Agent shall seek to remove the Collateral Agent as such, the Security Agents agree to use commercially reasonable efforts to appoint a successor Collateral Agent in a timely manner, it being understood that, in connection therewith the Company (and not the Security Agents) will be liable for any fees, expenses and costs associated therewith.

(c) Effective upon any resignation by, or removal of, the Collateral Agent pursuant to this Section 2.7, the term “Collateral Agent” shall mean such successor agent effective upon such appointment and acceptance, and [ ]’s rights, powers and duties as

Collateral Agent shall be terminated, without any other or further act or deed on the part of any of the parties to this Agreement or any Secured Party.

(d) After any Person's resignation as the Collateral Agent, the provisions of this ARTICLE shall inure to its benefit as to any actions taken or omitted to be taken by it while it was a Collateral Agent under this Agreement.

Section 2.8 Funds Expended. Without prejudice to the rights provided to the Collateral Agent under any of the provisions of this Agreement, when the Collateral Agent incurs expenses or renders services after an Event of Default occurs and is continuing, the expenses and the compensation for the services (including the reasonable and documented fees and expenses of its agents and outside counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

Section 2.9 No Risk of Funds. None of the provisions of this Agreement or the other Financing Documents shall be construed to require the Collateral Agent in its individual capacity to expend or risk its own funds or otherwise to incur any personal financial liability in the performance of any of its duties hereunder or thereunder.

### **ARTICLE 3. REPRESENTATIONS AND WARRANTIES.**

Section 3.1 Generally. Each party hereto represents and warrants:

(a) Such party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite powers and all authorizations and approvals required to carry on its business in all material respects as now conducted.

(b) The execution and delivery by such party of, and the performance by such party of its obligations under, this Agreement are within its powers, and have been duly authorized by all requisite action by such party. This Agreement has been duly executed and delivered by such party, and constitutes the legal, valid and binding obligations of such party, enforceable against such party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law) and an implied covenant of good faith and fair dealing.

(c) To the best knowledge of the officer executing this Agreement on behalf of such party, neither the execution and delivery by such party of this Agreement, nor the consummation of the transactions herein, nor compliance with the terms, conditions and provisions hereof by such party will (a) conflict with, or result in a breach or violation of, or constitute a default under any of such party's formation documents, or (b) conflict with or contravene (i) any applicable law binding on such party, (ii) any contractual restriction binding on or affecting such party, or (iii) any order, writ, judgment, award, injunction or decree binding on or affecting such party.

Section 3.2 Bank Security Agent. The Bank Security Agent hereby represents and warrants that (a) the Bank Security Agent has the power and authority to act hereunder on behalf

of each Bank Party (the Bank Security Agent shall be deemed to have remade this representation and warranty on each date upon which the Bank Security Agent takes any action under, or accepts any payment made pursuant to, this Agreement), and (b) Annex A hereto contains a true, correct and complete copy of each Loan Document on and as of the date hereof.

Section 3.3 Pari Passu Debt Security Agents. Each Pari Passu Debt Security Agent hereby represents and warrants that such Pari Passu Debt Security Agent has the power and authority to act hereunder on behalf of each Applicable Pari Passu Debt Party (such Pari Passu Debt Security Agent shall be deemed to have remade this representation and warranty on each date upon which such Pari Passu Debt Security Agent takes any action under, or accepts any payment made pursuant to, this Agreement). The Initial Pari Passu Debt Security Agent hereby represents and warrants that Annex B hereto contains a true, correct and complete copy of each Initial Pari Passu Debt Document on and as of the date hereof. Each Additional Pari Passu Debt Security Agent hereby represents and warrants that, as of the date of the Applicable Joinder Agreement, a true, correct and complete copy of each of the following (each as defined in such Applicable Joinder Agreement) is attached to such Applicable Joinder Agreement: (a) the Additional Pari Passu Debt Agreement, (b) the Additional Agency Agreement and (c) the Additional Pari Passu Debt Security Agreement.

Section 3.4 Collateral Agent. The Collateral Agent hereby represents and warrants that Annex C hereto contains a true, correct and complete copy of the Control Agreement on and as of the date hereof.

#### **ARTICLE 4. LIEN PRIORITIES; CERTAIN NOTICES; COLLATERAL LIQUIDATION**

Section 4.1 Pari Passu. Notwithstanding the time, order, or method of attachment or perfection of any Lien granted by the Security Agreements or the time or order of filing or recording of financing statements or other evidence of any such Lien, as among the Secured Parties, the Secured Obligations shall rank *pari passu*, and no Secured Party shall be entitled to any preferences or priority over any other Secured Party with respect to any Collateral and the Secured Parties shall share in the Collateral and all proceeds thereof in accordance with the terms of this Agreement.

Section 4.2 Prohibition on Contesting Liens. Each of the Bank Security Agent (on behalf of each Bank Party), each Pari Passu Debt Security Agent (on behalf of each Applicable Pari Passu Debt Party) and the Collateral Agent agrees that it will not (and hereby waives any right to) object to or contest, or support any other Person in objecting to or contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), (a) the priority, validity, extent, perfection or enforceability of a Lien held by or on behalf of any of the Secured Parties in the Collateral in accordance with the terms of this Agreement or (b) any or all of the provisions of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of the Collateral Agent, any Security Agent or any other Secured Party to enforce this Agreement in accordance with the terms hereof.

Section 4.3 No New Liens. So long as the Discharge of Secured Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or

against the Company, the parties hereto agree that no Secured Party shall accept from the Company any grant of any additional Lien on any property of the Company to secure any Secured Obligation, unless the Company has granted or concurrently grants a Lien on such property to secure all Secured Obligations on a *pari passu* basis.

Section 4.4 Notices. Each Security Agent agrees that in the event it shall send a Notice of Default, a Custody Liquidation Notice or an Other Liquidation Notice to the Collateral Agent, such Security Agent shall, simultaneously therewith, send a copy thereof to each other Security Agent, provided that the parties hereto agree that any failure by a Security Agent to do so shall not be a condition precedent to, or otherwise affect, the efficacy of any such Notice of Default, Custody Liquidation Notice or Other Liquidation Notice.

Section 4.5 Collateral Liquidation. In the course of liquidating the Collateral, each Security Agent shall act in a commercially reasonable manner and in good faith and, where practicable, in consultation and coordination with each other Security Agent for the purpose of managing the liquidation process in order to maximize liquidation proceeds in a timely manner. No Secured Party shall be permitted to credit bid all or any portion of its Secured Obligations in connection with any sale or other disposition of Collateral.

Section 4.6 Additional Pari Passu Debt. At any time and from time to time, one or more loan, credit or note purchase agreements pursuant to which the Company shall borrower secured revolving or term loans, issue senior secured notes or incur other secured indebtedness may be designated "Additional Pari Passu Debt" by delivering to the Collateral Agent and each Security Agent party hereto at such time:

(a) a certificate duly executed by an officer of the Company certifying that the incurrence of such Additional Pari Passu Debt does not violate or result in a default under the Credit Agreement or any Pari Passu Debt Agreement in effect at such time; and

(b) a fully completed Joinder Agreement executed and delivered by the Additional Pari Passu Debt Security Agent for such Additional Pari Passu Debt.

Upon the delivery of such certificate and the related attachments as provided above, the obligations designated in such notice as "Additional Pari Passu Debt" shall become Additional Pari Passu Debt and Pari Passu Debt Obligations for all purposes of this Agreement.

## **ARTICLE 5. CONTROL AGREEMENT.**

Section 5.1 Entry into Control Agreement. The Initial Pari Passu Debt Security Agent, on behalf of the Applicable Pari Passu Debt Parties, and the Bank Security Agent, on behalf of the Bank Parties, hereby directs the Collateral Agent to enter into the Control Agreement, and agrees to and ratifies the Collateral Agent's execution and delivery thereof. By becoming a party hereto each Additional Pari Passu Debt Security Agent, on behalf of the Applicable Pari Passu Debt Parties, agrees to and ratifies the Collateral Agent's execution and delivery of the Control Agreement.



Section 5.2 Information. The Collateral Agent agrees that, promptly after receipt of any of the following from the Intermediary, it shall send a copy thereof to each Security Agent: (a) any statement provided pursuant to Section 4(c) of the Control Agreement, and (b) any written notice pursuant to Section 10(b) of the Control Agreement. The Collateral Agent agrees that it shall provide to each Security Agent not less than three (3) Business Days' prior written notice of any assignment by the Collateral Agent of all or any portion of its rights and obligations under the Control Agreement.

Section 5.3 Notices. The Collateral Agent agrees that it shall notify each Security Agent promptly after the Collateral Agent shall have become aware of any material breach by the Intermediary of its obligations under the Control Agreement.

Section 5.4 Changes to Control Agreement. Each party hereto agrees that the Collateral Agent shall not, without the consent of the Security Agents, (a) agree to amend, restate, replace, supplement or otherwise modify the Control Agreement, (b) agree to any termination by the Company of the Control Agreement pursuant to Section 10 thereof, or (c) unless it shall have provided not fewer than thirty (30) days prior written notice thereof to each Security Agent, terminate the Control Agreement pursuant to Section 10 thereof.

## **ARTICLE 6. CUSTODY COLLATERAL.**

Section 6.1 Notice of Exclusive Control. Until the Discharge of Secured Obligations, promptly after receipt by the Collateral Agent of a Notice of Default from any Security Agent, the Collateral Agent shall (a) deliver a copy of such Notice of Default to each other Security Agent, and (b) deliver to the Intermediary a Notice of Exclusive Control.

Section 6.2 Custody Liquidation Notice. Until the Discharge of Secured Obligations, promptly after receipt by the Collateral Agent of a Custody Liquidation Notice from any Security Agent, the Collateral Agent shall (a) deliver a copy of such Custody Liquidation Notice to each other Security Agent, and (b) execute and, together with a copy of each Entitlement Order attached to such Collateral Liquidation Notice, deliver an Instruction Letter to the Intermediary (with a copy to each Security Agent).

## **ARTICLE 7. OTHER COLLATERAL.**

Section 7.1 Other Collateral. Pursuant to one or more of the Security Agreements, the Company may:

- (a) deliver or cause to be delivered to the Collateral Agent promissory notes, tangible chattel paper and certificated securities (together with any necessary endorsements),
- (b) with respect to one or more deposit accounts, either (i) cause the depository bank to agree to comply (without further consent of the Company) at any time with instructions from the Collateral Agent to such depository bank directing the disposition of funds from time to time credited to such deposit account, or (ii) arrange for the Collateral Agent to become the customer of the depository bank with respect to the deposit account,

(c) with respect to uncertificated securities, either (i) cause the issuer thereof to agree to comply with instructions from the Collateral Agent as to such securities, or (ii) arrange for the Collateral Agent to become the registered owner of the securities,

(d) with respect to any Collateral held through a securities intermediary or a commodity intermediary (other than the Intermediary), either (i) cause such securities intermediary or (as the case may be) commodity intermediary to agree to comply at any time with Entitlement Orders from the Collateral Agent, or (ii) with respect to Collateral constituting securities entitlements, arrange for the Collateral Agent to become the entitlement holder with respect to such investment property,

(e) with respect to any Collateral held by a bailee, obtain the acknowledgement of such bailee that it holds such Collateral for the benefit of the Collateral Agent,

(f) with respect to any electronic chattel paper, electronic document or transferable record, vest in the Collateral Agent “control” thereof,

(g) with respect to any letter of credit either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to the Collateral Agent of the proceeds of the letter of credit or (ii) arrange for the Collateral Agent to become the transferee beneficiary of the letter of credit, and

(h) cause the Collateral Agent’s name to be noted as secured party on any certificate of title for a titled good,

subject to the terms and conditions herein contained, and for the purposes of perfecting and ensuring the priority of the security interests created by the Security Agreements, the Collateral Agent agrees to all of the foregoing set forth in this Section 7.1.

Section 7.2 Possessory Liquidation Notice. Until the Discharge of Secured Obligations, promptly after receipt by the Collateral Agent of an Other Liquidation Notice from any Security Agent, the Collateral Agent shall (a) deliver a copy of such Other Liquidation Notice to each other Security Agent, and (b) comply with all Delivery Instructions contained therein.

## **ARTICLE 8. DISTRIBUTIONS.**

Section 8.1 Application of Proceeds. Each of the Collateral Agent, the Bank Security Agent (on behalf of itself and each Bank Party) and each Pari Passu Debt Security Agent (on behalf of itself and each Applicable Pari Passu Debt Party), hereby agrees that, regardless of any Insolvency or Liquidation Proceeding which has been commenced by or against the Company, in the event that it shall have received any of the following payments, each such payment shall be paid over to the Collateral Agent and held by the Collateral Agent in the Collection Account for distribution pursuant to Section 8.2: (a) all Liquidation Payments, (b) all payments received by the Collateral Agent from the Intermediary, (c) all cash proceeds of any Collateral referred to in Section 7.1 received by the Collateral Agent, and (d) all Deemed Preference Payments.

Section 8.2 Distributions from Collection Account. The Collateral Agent shall, at its own election or upon the request of any Security Agent (but no more frequently than weekly unless otherwise agreed by the Collateral Agent), distribute all monies then held in the Collection Account in the following order (provided that such monies shall not be so distributed under any distribution tier set forth below until such time as the amount of the Secured Obligations referred to in such distribution tier and all preceding distribution tiers has been determined in accordance with the terms hereof and under the terms of the relevant Financing Document, including and subject to Section 8.3):

First, to the payment of all agent's fees and collateral management fees of the Collateral Agent and all fees, costs and expenses incurred by the Collateral Agent in connection with the collection of proceeds of any Collateral or otherwise in connection with the Control Agreement and this Agreement, including all court costs, the fees and expenses of its agents and legal counsel, the repayment of all advances made by the Collateral Agent on behalf of the Company and any other costs or expenses incurred by the Collateral Agent in connection with the exercise of any right or remedy of any of the Secured Parties;

Second, to the payment of all amounts owing to the Security Agents (in their capacity as such);

Third, to the payment of any Secured Obligations (other than any prepayment premium or penalty or other premium or fee owing in connection with any prepayment (including any Make-Whole Amount)) on a pro rata basis based on the respective amounts of such Secured Obligations then outstanding;

Fourth, to the payment of any Secured Obligations constituting a prepayment premium or penalty or other premium or fee owing in connection with any prepayment (including any Make-Whole Amount) on a pro rata basis based on the respective amounts of such Secured Obligations then outstanding; and

Last, to the Company or such other Person or Persons that may be lawfully entitled thereto.

### Section 8.3 Secured Obligation Balances.

(a) Upon the written request of any Agent, each Security Agent shall promptly (and, in any event, within five Business Days) give each other Agent written notice of the aggregate amount of the Secured Obligations then outstanding and owed by the Company to the Related Secured Parties of such Security Agent under the applicable Financing Documents and any other information that such Agent may reasonably request (including information reasonably necessary to allow such Agent to determine which distribution tier contained in Section 8.2 would be applicable to each such Secured Obligation).

(b) Without limiting the foregoing, upon receipt of any of the monies referred to in Section 8.1, the Collateral Agent shall promptly provide notice to each Security Agent of the receipt of such monies. Within 10 Business Days of the receipt of such notice, each Security Agent shall give the Collateral Agent written certification by an authorized officer or

representative thereof of the aggregate amount of the Secured Obligations then due and owing by the Company to the Related Secured Parties of such Security Agent under the applicable Financing Documents (and, promptly upon receipt thereof, the Collateral Agent shall provide a copy of each such certification to each other Security Agent). Unless otherwise directed by a court of competent jurisdiction or each Security Agent, the Collateral Agent shall use the information provided for in such notices as the basis for applying such monies in accordance with Section 8.2.

Section 8.4 Advances. Notwithstanding anything to the contrary herein contained, during the continuance of any Event of Default, to the extent permitted by the applicable Financing Documents any Security Agent shall be entitled in its reasonable discretion to make payments or advances to the Collateral Agent for the purpose of protecting, preserving or defending the value of the Collateral, provided that any such payment or advance shall be deemed to constitute part of the Secured Obligations hereunder.

Section 8.5 Further Assurances. If, in connection with the exercise by a Security Agent (the "Acting Security Agent") of its remedies under the Financing Documents in respect of the Collateral, including any sale, exchange, transfer or other disposition of any such Collateral in connection with any judicial or non-judicial foreclosure or other similar liquidation or other realization (an "Exercise of Remedies"), the Acting Security Agent, for itself and on behalf of its Related Secured Parties, releases the Liens created under its Financing Documents on any part of the Collateral, then the Liens, if any, of each other Security Agent (each an "Other Security Agent"), for itself and for the benefit of its Related Secured Parties, on such Collateral, shall be automatically, unconditionally and simultaneously released and each Other Security Agent, for itself and its Related Secured Parties, promptly shall execute and deliver to the Acting Security Agent such termination statements, releases and other documents as the Acting Security Agent may reasonably request to effectively confirm such release.

## **ARTICLE 9. CHANGES TO FINANCING DOCUMENTS.**

Section 9.1 Amendments to Financing Documents; Etc. Notwithstanding anything to the contrary herein contained (but subject to Section 9.3), terms of the Secured Obligations and the Financing Documents may be amended, supplemented, renewed, extended or otherwise modified or Refinanced from time to time, and the aggregate amount of the Secured Obligations under the Financing Documents may be increased, in each event, without notice to or consent by any Secured Party that is not a party to such Financing Document and without affecting the provisions hereof, and the Lien priorities provided herein shall not be altered or otherwise affected by any such amendment, supplement, renewal, extension, or other modification or Refinancing, or any such increase.

Section 9.2 Other Matters. Notwithstanding anything to the contrary herein contained (but subject to Section 9.3), the Collateral Agent, the Bank Security Agent, each Pari Passu Debt Security Agent and each other Secured Party and any of them may, at any time and from time to time in accordance with the applicable Financing Documents and/or applicable law, without the consent of or notice to any other Secured Party (to the extent no such consent or notice is otherwise required hereunder or thereunder), without incurring responsibility to any other

Secured Party and without impairing or releasing the Lien priorities and other benefits provided in this Agreement, do one or more of the following:

(i) change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the Secured Obligations or any Lien on any Collateral or guaranty thereof or any liability of the Company, or any liability incurred directly or indirectly in respect thereof (including any increase in (pursuant to any incremental facilities under the Credit Agreement or otherwise) or extension of the Secured Obligations, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens held by the Collateral Agent or any of the Secured Parties, the Secured Obligations or any of the Financing Documents;

(ii) deal with in any manner any liability of the Company to the Secured Parties to the extent such Person has the right to take and is not prohibited to take such action under the applicable Financing Documents;

(iii) settle or compromise any Secured Obligation or any other liability of the Company or any security therefor or any liability incurred directly or indirectly in respect thereof and (subject to the requirements of Article 8) apply any sums by whomsoever paid and however realized to any liability (including the Secured Obligations) in any manner or order;

(iv) exercise or delay in or refrain from exercising any right or remedy against the Company or any security or any other Person, elect any remedy and otherwise deal freely with the Company, any Collateral and any guarantor or any liability of the Company to the Secured Parties or any liability incurred directly or indirectly in respect thereof; and

(v) terminate any commitment it may have to extend credit to the Company, accelerate the maturity of any of its Secured Obligations, or demand payment from or institute legal action against the Company to obtain a judgment or other legal process in respect of its Secured Obligations.

### Section 9.3 Limitations.

(a) Changes to Loan Documents. Notwithstanding anything to the contrary herein contained, the Bank Security Agent agrees, solely on behalf of each Bank Party (other than the Bank Security Agent), that the Loan Documents may not be amended, supplemented, renewed, extended or otherwise modified without the consent of each other Security Agent if the effect thereof would be to release any Collateral from the Lien of the Bank Security Agreement.

(b) Changes to Pari Passu Debt Documents. Notwithstanding anything to the contrary herein contained, each Pari Passu Debt Security Agent agrees, solely on behalf of each Applicable Pari Passu Debt Party (other than such Pari Passu Debt Security Agent), that the Applicable Pari Passu Debt Documents may not be amended, supplemented, renewed, extended

or otherwise modified without the consent of each other Security Agent if the effect thereof would be to release any Collateral from the Lien of a Pari Passu Debt Security Agreement.

(c) Liability. Notwithstanding anything to the contrary herein contained, no Security Agent, in its capacity as such, shall have any liability for any breach by any other Person of Section 9.3(a) or Section 9.3(b).

(d) Notices; Certain Actions. So long as any Secured Obligation remains outstanding in respect of more than one class of Secured Parties, each Security Agent hereby agrees to give the Collateral Agent and each other Security Agent notice of (i) the occurrence of an Event of Default under any of the Financing Documents for which it acts as a Security Agent promptly after it shall become aware thereof, provided, however, that no Security Agent shall be liable for any failure to provide any such notice and no such failure shall limit or impair the rights of the Secured Parties hereunder or under the other Financing Documents, and (ii) the acceleration of the maturity of any Secured Obligations under any of the Financing Documents for which it acts as a Security Agent promptly after it shall become aware thereof, and setting forth the aggregate amount of Secured Obligations that have been so accelerated under such Financing Documents.

## **ARTICLE 10.       INSOLVENCY OR LIQUIDATION PROCEEDINGS.**

Section 10.1 Avoidance Issues. If any Secured Party is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Company for any reason, including without limitation because it was found to be a fraudulent or preferential transfer, any amount paid in respect of the Secured Obligations (a “Recovery”). whether received as proceeds of security, enforcement of any right of set-off or otherwise, then such Secured Obligations shall be automatically reinstated with respect to all such recovered amounts. In such event (a) the Discharge of Secured Obligations shall be deemed not to have occurred and (b) if this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement.

Section 10.2 Effectiveness in Insolvency Proceedings. This Agreement shall be effective before, during and after the commencement of an Insolvency and Liquidation Proceeding.

Section 10.3 Separate Classification for Voting Purposes. Each Secured Party acknowledges and agrees that the grants of Liens pursuant to the Loan Documents and the Note Documents constitute two separate and distinct grants of Liens. The Bank Parties and the Note Parties may seek in any Insolvency and Liquidation Proceeding to be treated as separate classes of creditors from each other for such voting purposes and the Company shall not oppose any pleading or motion by the Bank Parties or the Note Parties for the Bank Parties and the Note Parties to be treated as separate classes of creditors for such voting purposes. The foregoing acknowledgment and agreement shall not impair, release or otherwise affect the Lien priorities, the application of proceeds and the other benefits provided in this Agreement.

## **ARTICLE 11. RELIANCE; WAIVERS; ETC.**

Section 11.1 Reliance. Other than any reliance on the terms of this Agreement, the Collateral Agent, the Bank Security Agent (on behalf of each Bank Party) and each Pari Passu Debt Security Agent (on behalf of each Applicable Pari Passu Debt Party, each of which has confirmed to such Pari Passu Debt Security Agent that it has made such credit analysis on its own) acknowledges that it has, independently and based on documents and information deemed by it appropriate, made its own credit analysis and decision to enter into such Financing Documents and be bound by the terms of this Agreement and it will continue to make its own credit decision in taking or not taking any action under the Financing Documents or this Agreement.

Section 11.2 No Warranties or Liability. The Collateral Agent, the Bank Security Agent (on behalf of each Bank Party), and each Pari Passu Debt Security Agent (on behalf of each Applicable Pari Passu Debt Party) acknowledges and agrees that no Secured Party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Financing Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. Except as otherwise expressly provided herein, the Secured Parties will be entitled to manage and supervise their respective loans, notes and extensions of credit under the Financing Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate.

Section 11.3 No Waiver. No right of any Secured Party to enforce any provision of this Agreement or any Financing Document shall at any time in any way be prejudiced or impaired by any act or failure to act by any other Secured Party, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, the Control Agreement or any Financing Document, regardless of any knowledge thereof which any Secured Party may have or be otherwise charged with.

Section 11.4 Obligations Unconditional. All rights, interests, agreements and obligations of the Secured Parties, respectively, hereunder shall remain in full force and effect irrespective of:

- (a) any lack of validity or enforceability of any Financing Documents;
- (b) except as otherwise expressly set forth in this Agreement, any change in the time, manner or place of payment of, or in any other terms of, all or any of the Secured Obligations or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any Financing Document;
- (c) except as otherwise expressly set forth in this Agreement, any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the Secured Obligations or any guarantee thereof;

(d) the commencement of any Insolvency or Liquidation Proceeding in respect of the Company; or

(e) any other circumstances which otherwise might constitute a defense available to, or a discharge of, the Company in respect of the Secured Obligations or any Secured Party.

## **ARTICLE 12. MISCELLANEOUS.**

Section 12.1 Conflicts. In the event of any conflict between the provisions of this Agreement and the provisions of any other Financing Document, the provisions of this Agreement shall govern and control.

Section 12.2 Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by each of the parties hereto. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Subject to the terms of this Agreement and the terms of any other Financing Document, the Secured Parties may continue, at any time and without notice to any other Secured Party, to extend credit and other financial accommodations and lend monies to or for the benefit of the Company constituting Secured Obligations in reliance hereon.

(a) Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to the Company shall include the Company as debtor and debtor-in-possession and any receiver or trustee for the Company (as the case may be) in any Insolvency or Liquidation Proceeding.

(b) Subject to Section 10.1 and any other Section hereof that, in accordance with its terms shall survive the expiration or other termination of this Agreement, this Agreement shall terminate and be of no further force and effect on the date of Discharge of Secured Obligations.

### Section 12.3 Amendments; Waivers.

(a) No amendment, modification or waiver of any of the provisions of this Agreement shall be effective unless the same shall be in writing and signed on behalf of each party hereto.

(b) Notwithstanding Section 12.3(a), the Company shall not have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement.

(c) Information Concerning Financial Condition of the Company. Each Secured Party shall be responsible for keeping itself informed of (a) the financial condition of the Company and all endorsers and/or guarantors of the Secured Obligations and (b) all other circumstances bearing upon the risk of nonpayment of the Secured Obligations. Except as otherwise expressly provided herein or in the applicable Financing Documents, no Secured Party



shall have any duty to advise any other Secured Party of information known to it or them regarding such condition or any such circumstances or otherwise.

Section 12.4 Submission to Jurisdiction.

(a) The Bank Security Agent (on behalf of each Bank Party), each Pari Passu Debt Security Agent (on behalf of each Applicable Pari Passu Debt Party), the Collateral Agent and the Company hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the State of New York or any federal court sitting therein, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each such party hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such State of New York or, to the extent permitted by law, in such Federal court. Each such party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any Secured Party may otherwise have to bring any action or proceeding against the Company or its properties in the courts of any jurisdiction.

(b) The Bank Security Agent (on behalf of each Bank Party), each Pari Passu Debt Security Agent (on behalf of each Applicable Pari Passu Debt Party), the Collateral Agent and the Company hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so (i) any objection it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in Section 12.4(a). and (ii) the defense of an inconvenient forum to the maintenance of such action or proceeding.

(c) The Bank Security Agent (on behalf of each Bank Party), each Pari Passu Debt Security Agent (on behalf of each Applicable Pari Passu Debt Party), the Collateral Agent and the Company irrevocably consents to service of process in the manner provided for notices in Section 12.5. Nothing in this Agreement will affect the right of any Secured Party to serve process in any other manner permitted by law.

(d) WAIVER OF JURY TRIAL. THE BANK SECURITY AGENT (ON BEHALF OF EACH BANK PARTY), EACH NOTE SECURITY AGENT (ON BEHALF OF EACH APPLICABLE PARI PASSU DEBT PARTY), THE COLLATERAL AGENT AND THE COMPANY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

Section 12.5 Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered or, in the case of facsimile notice, when received, addressed to the parties hereto at the addresses set forth on the signature pages hereto (or, in the case of an Additional Pari Passu Debt Security Agent, on its signature page of the Applicable Joinder Agreement) or at such other address as

may be designated by any such party in a written notice to all of the other parties. Each party hereto 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.

**Section 12.6 APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF NEW YORK.**

Section 12.7 Binding on Successors and Assigns. This Agreement shall be binding upon each of the parties hereto from time to time and the Secured Parties, and their respective successors and assigns.

Section 12.8 Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

Section 12.9 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile or in portable document format by e-mail), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by facsimile (or in portable document format by e-mail) shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 12.10 No Third Party Beneficiaries. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns and shall inure to the benefit of each of the Secured Parties. Notwithstanding anything to the contrary herein contained, the Company shall not be a third party beneficiary (express, implied or otherwise) of this Agreement.

Section 12.11 Provisions Solely to Define Relative Rights. The provisions of this Agreement are for the purpose of defining the relative rights, benefits, privileges and immunities of the Secured Parties, respectively. Nothing in this Agreement shall impair the obligations of the Company, which are absolute and unconditional, to pay and perform the Secured Obligations as and when the same shall become due and payable in accordance with their terms.

Section 12.12 Force Majeure. In no event shall the Collateral Agent be responsible or liable for any failure or delay in the performance of any act or obligation hereunder arising out of or caused by, directly or indirectly, force majeure events beyond its control, including without limitation, strikes, work stoppages, accidents, acts of war, other military disturbances or terrorism, earthquakes, fire, flood, sabotage, epidemics, riots, nuclear or natural catastrophes or acts of God, labor disputes, acts of civil or military authority and governmental action, or the unavailability of the Federal Reserve Board wire systems and interruptions, loss or malfunctions of utilities, communications facilities or computer (software and hardware) services; it being understood that the Collateral Agent shall use reasonable efforts which are consistent with

accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 12.13 Consequential Damages. Anything in this Agreement to the contrary notwithstanding, in no event shall any of the parties hereto be liable under or in connection with this Agreement for indirect, special, exemplary, incidental, punitive or consequential losses or damages of any kind whatsoever, including but not limited to lost profits, whether or not foreseeable, even if such party has been advised of the possibility thereof and regardless of the form of action in which such damages are sought.

*[rest of page intentionally left blank]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

[ \_\_\_\_\_ ], as Collateral Agent

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

SUNTRUST BANK, as Bank Security Agent

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

[REDACTED]

With a copy to:

[REDACTED]

and

[REDACTED]

[ \_\_\_\_\_ ], as Initial Pari Passu Debt Security Agent

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

By signing below, the Company:

(a) acknowledges that the Bank Security Agent, each Pari Passu Debt Security Agent and the Collateral Agent have entered into this Collateral Agency and Intercreditor Agreement,

(b) agrees that it shall (i) promptly pay all reasonable and documented out-of-pocket expenses of each Agent, including reasonable fees and disbursements of special counsel for each Agent, in connection with the preparation, negotiation and closing of this Agreement, any waiver or consent hereunder or any amendment hereof, (ii) indemnify each Agent against any transfer taxes, documentary taxes, assessments or charges made by any governmental authority by reason of the execution and delivery of this Agreement, and (iii) indemnify each Agent and each of their affiliates, officers, directors and employees (each, a "Covered Person") and hold each Covered Person harmless from and against any and all claims, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) and disbursements of any kind or nature (collectively, "Liabilities") which may be incurred by or asserted or awarded against such Covered Person, in each case arising out of or in connection with any investigative, administrative or judicial proceeding (whether or not such Covered Person shall be designated a party thereto) relating to or arising out of this Agreement or the Control Agreement, provided that no Covered Person shall have the right to be indemnified hereunder for Liabilities that are determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Covered Person (or any of its affiliates, officers, directors and employees); this paragraph shall survive the expiration or other termination of this Collateral Agency and Intercreditor Agreement,

(c) agrees to be bound by the provisions of this Collateral Agency and Intercreditor Agreement to the extent applicable to the Company including Section 2.7(b), Section 8.1, Section 12.4 and Section 12.6,

(d) agrees that notwithstanding Section 9.1 of this Collateral Agency and Intercreditor Agreement, the Company shall give notice to each Security Agent of any amendments, modifications, supplements, extensions of the Financing Documents and the Custody Agreement, and copies of any related documentation,

(e) acknowledges that the Collateral under each Security Agreement is the same and will remain the same,

(f) agrees to send to each Security Agent each report referred to in Section 9 of the Control Agreement promptly after the same becomes available from the Intermediary, and

(g) agrees to use commercially reasonable efforts to appoint a replacement custodian within the 60 day period after the Company receives written notice from JPMorgan Chase Bank, N.A. of its intention to terminate the Control Agreement.

[Signature page to acknowledgement follows]

Acknowledgement to Collateral Agency and Intercreditor Agreement

KAYNE ANDERSON ENERGY  
DEVELOPMENT COMPANY

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

Name:

Title:

[Signature Page to Acknowledgement to Collateral Agency and Intercreditor Agreement]

EXHIBIT A

[Form of]

Custody Liquidation Notice

[LETTERHEAD OF SECURITY AGENT]

[Date]

[\_\_\_\_\_]
[\_\_\_\_\_] as
Collateral Agent
[\_\_\_\_\_]
[\_\_\_\_\_]

Re: COLLATERAL AGENCY AND INTERCREDITOR AGREEMENT, dated as of [\_\_\_\_\_] \_\_, 20\_\_], by and among SUNTRUST BANK, in its capacity as Bank Security Agent, [\_\_\_\_\_] in its capacity as Initial Pari Passu Debt Security Agent, each Additional Pari Passu Debt Security Agent that may have become a party thereto, and [\_\_\_\_\_] in its capacity as Collateral Agent (the "Intercreditor Agreement").

Ladies and Gentlemen:

Capitalized terms used herein and not herein defined have the meanings ascribed thereto pursuant to the Intercreditor Agreement.

The undersigned hereby certifies that (a) it is [[the Bank] [a Pari Passu Debt]] Security Agent under and pursuant to the Intercreditor Agreement, and (b) is entitled to deliver this Custody Liquidation Notice to the Collateral Agent.

Pursuant to Section 6.2 of the Intercreditor Agreement, the undersigned hereby directs the Collateral Agent to (a) deliver a copy of hereof (together with all of the attachments hereto) to the other Security Agent, and (b) execute and deliver to the Intermediary an Instruction Letter attaching each of the Entitlement Orders attached hereto.

[\_\_\_\_\_] as [[the Bank] [a Pari Passu Debt]] Security Agent

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

[cc: other Security Agents]



EXHIBIT B

[Form of]

Instruction Letter

[LETTERHEAD OF COLLATERAL AGENT]

[Date]

[Name, capacity and address of  
Intermediary]

Re: Control Agreement, dated as of [\_\_\_\_\_, 20\_\_], among  
[\_\_\_\_\_] [\_\_\_\_\_] as Collateral Agent, and JPMORGAN CHASE  
BANK, N.A., in its capacity as custodian under that certain custody agreement  
referred to therein (as further amended, supplemented or otherwise modified, the  
“Control Agreement”).

Ladies and Gentlemen:

Capitalized terms used herein and not herein defined have the meanings ascribed thereto  
pursuant to the Control Agreement.

Pursuant to the Control Agreement, the undersigned hereby orders, instructs and  
otherwise directs [**Intermediary**] to honor and otherwise comply with each [**instruction (within  
the meaning of Section 9-104(a)(2) of the UCC), entitlement order (within the meaning of  
Section 8-106(d)(2) of the UCC), and direction to apply any value (within the meaning of  
Section 9-106(b)(2) of the UCC)**] attached hereto.

[\_\_\_\_\_]
[\_\_\_\_\_] , as Collateral Agent

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

EXHIBIT C

[Form of]

Other Liquidation Notice

[LETTERHEAD OF SECURITY AGENT]

[Date]

[\_\_\_\_\_  
\_\_\_\_\_  
Collateral Agent  
\_\_\_\_\_  
\_\_\_\_\_]

Re: COLLATERAL AGENCY AND INTERCREDITOR AGREEMENT, dated as of [\_\_\_\_\_, 20\_\_], by and among SUNTRUST BANK, in its capacity as Bank Security Agent, [\_\_\_\_\_] in its capacity as Initial Pari Passu Debt Security Agent, each Additional Pari Passu Debt Security Agent that may have become a party thereto, and [\_\_\_\_\_] in its capacity as Collateral Agent (the “Intercreditor Agreement”).

Ladies and Gentlemen:

Capitalized terms used herein and not herein defined have the meanings ascribed thereto pursuant to the Intercreditor Agreement.

The undersigned hereby certifies that (a) it is **[[the Bank] [a Pari Passu Debt]]** Security Agent under and pursuant to the Intercreditor Agreement, and (b) it is entitled to deliver this Other Liquidation Notice to the Collateral Agent.

Pursuant to Section 7.2 of the Intercreditor Agreement, the undersigned hereby directs the Collateral Agent to comply with each of the following Delivery Instructions:

[\_\_\_\_\_] as **[[the Bank] [a Pari Passu Debt]]** Security Agent

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

Name:

Title:

[cc: other Security Agents]

EXHIBIT D

[Form of]

Joinder Agreement

[Date]

[\_\_\_\_\_] ]  
[\_\_\_\_\_] ], as  
Collateral Agent  
[\_\_\_\_\_] ]  
[\_\_\_\_\_] ]

Re: COLLATERAL AGENCY AND INTERCREDITOR AGREEMENT, dated as of [\_\_\_\_\_] \_\_, 20\_\_], by and among SUNTRUST BANK, in its capacity as Bank Security Agent, [\_\_\_\_\_] in its capacity as Initial Pari Passu Debt Security Agent, each Additional Pari Passu Debt Security Agent that may have become a party thereto, and [\_\_\_\_\_] ], in its capacity as Collateral Agent (the "Intercreditor Agreement").

Ladies and Gentlemen:

Capitalized terms used herein and not herein defined have the meanings ascribed thereto pursuant to the Intercreditor Agreement. The Intercreditor Agreement relates to certain indebtedness of [\_\_\_\_\_]

By signing below, the Company represents and warrants that (a) immediately before and after giving effect to the issuance by the Company of the [senior notes][loans][indebtedness] referred to on Attachment A hereto (the "Additional Pari Passu Debt") no Event of Default has occurred and is continuing, (b) Attachment B hereto is a true correct and complete copy of the Pari Passu Debt Agreement pursuant to which the Additional Pari Passu Debt were issued (the "Additional Pari Passu Debt Agreement"), and (c) Attachment C hereto is a true correct and complete copy of the Security Agreement securing the obligations of the Company in respect of the Additional Pari Passu Debt (the "Additional Pari Passu Debt Security Agreement").

By signing below, \_\_\_\_\_ (a) represents and warrants that it has been duly appointed as security agent (in such capacity, the "Additional Pari Passu Debt Security Agent") for the Pari Passu Debt Holders of the Additional Pari Passu Debt pursuant to an agency agreement dated on or about the date hereof, a true, correct and complete copy of which is attached hereto as Attachment D (the "Additional Agency Agreement"), and (b) agrees to observe and perform all of its obligations as an Additional Pari Passu Debt Security Agent under and pursuant to the terms of the Intercreditor Agreement.

For purposes of the Intercreditor Agreement, (a) the Additional Pari Passu Debt constitute "Additional Pari Passu Debt", (b) the Additional Pari Passu Debt Agreement constitutes an "Additional Pari Passu Debt Agreement", (c) the Additional Pari Passu Debt

Security Agent is an “Additional Pari Passu Debt Security Agent”, and (d) the Additional Agency Agreement constitutes an “Additional Agency Agreement”.

By signing below, the Additional Pari Passu Debt Security Agent represents and warrants that immediately after giving effect to this Joinder Agreement, all of the representations and warranties made by the Additional Pari Passu Debt Security Agent in the Intercreditor Agreement are true and correct on and as of the date hereof.

KAYNE ANDERSON ENERGY  
DEVELOPMENT COMPANY

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

Address:  
Debt  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[\_\_\_\_\_], as Additional Pari Passu  
Security Agent

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

Acknowledged and agreed:

[\_\_\_\_\_], as Collateral Agent

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

**Attachment A to Joinder Agreement**

List of Additional Pari Passu Debt

**Attachment B to Joinder Agreement**

[Additional Pari Passu Debt Agreement]

**Attachment C to Joinder Agreement**

[Additional Pari Passu Debt Security Agreement]



**Attachment D to Joinder Agreement**

[Additional Agency Agreement]

EXHIBIT E  
**[Form of]**  
Control Agreement

**ANNEX A**

**[Attach copy of each Loan Document]**

**ANNEX B**

**[Attach copy of each Initial Pari Passu Debt Document]**