

EXECUTION COPY

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KAYNE ANDERSON MIDSTREAM/ENERGY FUND, INC.

\$50,000,000 4.00% Series C Senior Unsecured Notes due March 22, 2022

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NOTE PURCHASE AGREEMENT

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Dated March 22, 2012

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## TABLE OF CONTENTS

SECTION	HEADING	PAGE
SECTION 1.	AUTHORIZATION OF NOTES .....	1
SECTION 2.	SALE AND PURCHASE OF NOTES .....	1
SECTION 3.	CLOSING .....	2
SECTION 4.	CONDITIONS TO CLOSING.....	2
Section 4.1.	Representations and Warranties.....	2
Section 4.2.	Performance; No Default .....	2
Section 4.3.	Compliance Certificates.....	2
Section 4.4.	Opinions of Counsel .....	3
Section 4.5.	Purchase Permitted By Applicable Law, Etc .....	3
Section 4.6.	Sale of Other Notes .....	3
Section 4.7.	Payment of Special Counsel Fees .....	3
Section 4.8.	Private Placement Number .....	4
Section 4.9.	Changes in Corporate Structure .....	4
Section 4.10.	Funding Instructions .....	4
Section 4.11.	Rating of Notes .....	4
Section 4.12.	Proceedings and Documents .....	4
Section 4.13.	Sale of MRP Shares; Satisfaction of Closing Conditions in 2012 Securities Purchase Agreement .....	4
SECTION 5.	REPRESENTATIONS AND WARRANTIES OF THE COMPANY.....	4
Section 5.1.	Organization; Power and Authority .....	4
Section 5.2.	Authorization, Etc .....	5
Section 5.3.	Disclosure .....	5
Section 5.4.	No Subsidiaries .....	5
Section 5.5.	Financial Statements; Material Liabilities .....	5
Section 5.6.	Compliance with Laws, Other Instruments, Etc .....	5
Section 5.7.	Governmental Authorizations, Etc.....	6
Section 5.8.	Litigation; Observance of Statutes and Orders .....	6
Section 5.9.	Taxes .....	6
Section 5.10.	Title to Property; Leases .....	6
Section 5.11.	Licenses, Permits, Etc .....	7
Section 5.12.	Compliance with ERISA.....	7
Section 5.13.	Private Offering by the Company .....	7
Section 5.14.	Use of Proceeds; Margin Regulations.....	7
Section 5.15.	Existing Indebtedness .....	7
Section 5.16.	Foreign Assets Control Regulations, Etc .....	8

Section 5.17.	Status under Certain Statutes .....	8
Section 5.18.	Ranking of Obligations .....	9
SECTION 6.	REPRESENTATIONS OF THE PURCHASERS .....	9
Section 6.1.	Purchase for Investment .....	9
Section 6.2.	Source of Funds .....	9
SECTION 7.	INFORMATION AS TO THE COMPANY .....	11
Section 7.1.	Financial and Business Information .....	11
Section 7.2.	Officer's Certificate .....	13
Section 7.3.	Visitation .....	14
SECTION 8.	PAYMENT AND PREPAYMENT OF THE NOTES .....	14
Section 8.1.	Maturity .....	14
Section 8.2.	Optional Prepayments with Make-Whole Amount and Special Optional Prepayments .....	14
Section 8.2.1.	Optional Prepayments of the Notes with Make-Whole Amount .....	15
Section 8.2.2.	Special Optional Prepayments .....	15
Section 8.2.3.	Prepayments of Notes One Month Prior to Maturity at Par .....	16
Section 8.3.	Allocation of Partial Prepayments .....	16
Section 8.4.	Maturity; Surrender, Status, Etc .....	16
Section 8.5.	Purchase of Notes .....	17
Section 8.6.	Make-Whole Amount .....	17
Section 8.7.	Adjustment Period .....	18
SECTION 9.	AFFIRMATIVE COVENANTS .....	19
Section 9.1.	Compliance with Law .....	19
Section 9.2.	Insurance .....	19
Section 9.3.	Maintenance of Properties .....	19
Section 9.4.	Payment of Taxes .....	19
Section 9.5.	Corporate Existence, Etc .....	19
Section 9.6.	Books and Records .....	20
Section 9.7.	Asset Coverage .....	20
Section 9.8.	Current Rating on the Notes .....	20
Section 9.9.	Most Favored Lender Status .....	20
Section 9.10.	Ranking of Obligations .....	21
Section 9.11.	Maintenance of Status .....	21
SECTION 10.	NEGATIVE COVENANTS .....	21
Section 10.1.	Transactions with Affiliates .....	21
Section 10.2.	Merger, Consolidation, Etc .....	21
Section 10.3.	Terrorism Sanctions Regulations .....	22

Section 10.4.	Certain Other Restrictions.....	22
Section 10.5.	No Subsidiaries .....	22
Section 10.6.	Secured Debt .....	23
SECTION 11.	EVENTS OF DEFAULT .....	23
SECTION 12.	REMEDIES ON DEFAULT, ETC.....	25
Section 12.1.	Acceleration .....	25
Section 12.2.	Other Remedies.....	26
Section 12.3.	Rescission .....	26
Section 12.4.	No Waivers or Election of Remedies, Expenses, Etc .....	26
SECTION 13.	REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES.....	26
Section 13.1.	Registration of Notes .....	26
Section 13.2.	Transfer and Exchange of Notes.....	27
Section 13.3.	Replacement of Notes .....	27
SECTION 14.	PAYMENTS ON NOTES .....	28
Section 14.1.	Place of Payment.....	28
Section 14.2.	Home Office Payment.....	28
Section 14.3.	Agency Agreement .....	28
SECTION 15.	EXPENSES, ETC .....	29
Section 15.1.	Transaction Expenses.....	29
Section 15.2.	Survival .....	29
SECTION 16.	SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT .....	29
SECTION 17.	AMENDMENT AND WAIVER .....	29
Section 17.1.	Requirements .....	29
Section 17.2.	Solicitation of Holders of Notes .....	30
Section 17.3.	Binding Effect, Etc.....	30
Section 17.4.	Notes Held by Company, Etc.....	31
SECTION 18.	NOTICES.....	31
SECTION 19.	REPRODUCTION OF DOCUMENTS.....	31
SECTION 20.	CONFIDENTIAL INFORMATION .....	32
SECTION 21.	SUBSTITUTION OF PURCHASER.....	33

SECTION 22.	MISCELLANEOUS .....	33
Section 22.1.	Successors and Assigns.....	33
Section 22.2.	Payments Due on Non-Business Days.....	33
Section 22.3.	Accounting Terms.....	33
Section 22.4.	Severability .....	34
Section 22.5.	Construction, Etc.....	34
Section 22.6.	Counterparts .....	34
Section 22.7.	Governing Law .....	34
Section 22.8.	Jurisdiction and Process; Waiver of Jury Trial .....	34
SCHEDULE A	— Information Relating to Purchasers	
SCHEDULE B	— Defined Terms	
SCHEDULE 5.3	— Disclosure Materials	
SCHEDULE 5.5	— Financial Statements	
SCHEDULE 5.15	— Existing Indebtedness	
EXHIBIT 1	— Form of 4.00% Series C Senior Unsecured Notes due March 22, 2022	
EXHIBIT 4.4(a)	— Form of Opinion of Special Counsel to the Company	
EXHIBIT 4.4(b)	— Form of Opinion of Special Counsel to the Purchasers	
EXHIBIT 13.1	— Form of Legend	
EXHIBIT 14.3	— Form of Agency Agreement	

KAYNE ANDERSON MIDSTREAM/ENERGY FUND, INC.  
717 Texas Avenue, Suite 3100  
Houston, Texas 77002

\$50,000,000 4.00% Series C Senior Unsecured Notes due March 22, 2022

March 22, 2012

TO EACH OF THE PURCHASERS LISTED IN  
SCHEDULE A HERETO:

Ladies and Gentlemen:

KAYNE ANDERSON MIDSTREAM/ENERGY FUND, INC., a Maryland corporation (the "*Company*"), agrees with each of the purchasers whose names appear at the end hereof (each, a "*Purchaser*" and, collectively, the "*Purchasers*") as follows:

SECTION 1. AUTHORIZATION OF NOTES.

The Company will authorize the issue and sale of \$50,000,000 aggregate principal amount of its senior notes consisting of \$50,000,000 aggregate principal amount 4.00% Series C Senior Unsecured Notes due March 22, 2022 such term to include any such notes issued in substitution therefor pursuant to Section 13, the "*Notes*").

The Notes shall be substantially in the form set out in Exhibit 1. Certain capitalized and other terms used in this Agreement are defined in Schedule B; and references to a "Schedule" or an "Exhibit" are, unless otherwise specified, to a Schedule or an Exhibit attached to this Agreement.

The Notes shall bear interest from the date of issuance at a fixed rate equal to 4.00% per annum payable semiannually on the 3rd day of each March and September in each year (commencing September 3, 2012) and at maturity and to bear interest on overdue principal (including any overdue required or optional prepayment of principal) and premium, if any, and (to the extent legally enforceable) on any overdue installment of interest at the Default Rate until paid. Interest shall be subject to adjustment in accordance with Section 8.7.

Interest on the Notes shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 2. SALE AND PURCHASE OF NOTES.

Subject to the terms and conditions of this Agreement, the Company will issue and sell to each Purchaser and each Purchaser will purchase from the Company, at the Closing provided for in Section 3, Notes in the principal amount specified opposite such Purchaser's name in

Schedule A at the purchase price of 100% of the principal amount thereof. The Purchasers' obligations hereunder are several and not joint obligations and no Purchaser shall have any liability to any Person for the performance or non-performance of any obligation by any other Purchaser hereunder.

### SECTION 3. CLOSING.

The sale and purchase of the Notes to be purchased by each Purchaser shall occur at the offices of Chapman and Cutler LLP, 111 West Monroe Street, Chicago, Illinois 60603-4080, at 10:00 a.m., Chicago time, at a closing (the "*Closing*") on March 22, 2012 or on such other Business Day thereafter on or prior to March 23, 2012 as may be agreed upon by the Company and the Purchasers. At the Closing, the Company will deliver or cause to be delivered to each Purchaser the Notes to be purchased by such Purchaser in the form of a single Note (or such greater number of Notes in denominations of at least \$500,000 as such Purchaser may request) dated the date of the Closing and registered in such Purchaser's name (or in the name of its nominee), against delivery by such Purchaser to the Company of immediately available funds in the amount of the purchase price therefor by wire transfer of immediately available funds for the account of the Company to

If at the Closing the Company shall fail to tender such Notes to any Purchaser as provided above in this Section 3, or any of the conditions specified in Section 4 shall not have been fulfilled to such Purchaser's satisfaction, such Purchaser shall, at its election, be relieved of all further obligations under this Agreement, without thereby waiving any rights such Purchaser may have by reason of such failure or such nonfulfillment.

### SECTION 4. CONDITIONS TO CLOSING.

Each Purchaser's obligation to purchase and pay for the Notes to be sold to such Purchaser at the Closing is subject to the fulfillment to such Purchaser's satisfaction, prior to or at the Closing, of the following conditions:

*Section 4.1. Representations and Warranties.* The representations and warranties of the Company in this Agreement shall be correct when made and at the time of the Closing.

*Section 4.2. Performance; No Default.* The Company shall have performed and complied with all agreements and conditions contained in this Agreement required to be performed or complied with by it prior to or at the Closing and after giving effect to the issue and sale of the Notes (and the application of the proceeds thereof as contemplated by Section 5.14) no Default or Event of Default shall have occurred and be continuing.

*Section 4.3. Compliance Certificates.*

(a) *Officer's Certificate.* The Company shall have delivered to such Purchaser an Officer's Certificate, dated the date of the Closing, certifying that the conditions specified in Sections 4.1, 4.2 and 4.9 have been fulfilled.

(b) *Secretary's Certificate.* The Company shall have delivered to such Purchaser a certificate of its Secretary or Assistant Secretary, dated the date of Closing, certifying as to the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of the Notes and this Agreement.

*Section 4.4. Opinions of Counsel.* Such Purchaser shall have received opinions in form and substance satisfactory to such Purchaser, dated the date of the Closing (a) from Paul, Hastings, Janofsky & Walker LLP, counsel for the Company, and from Venable LLP, special Maryland counsel to the Company, together covering the matters set forth in Exhibit 4.4(a) and covering such other matters incident to the transactions contemplated hereby as such Purchaser or its counsel may reasonably request (and the Company hereby instructs its counsel to deliver such opinion to the Purchasers) and (b) from Chapman and Cutler LLP, the Purchasers' special counsel in connection with such transactions, substantially in the form set forth in Exhibit 4.4(b) and covering such other matters incident to such transactions as such Purchaser may reasonably request.

*Section 4.5. Purchase Permitted By Applicable Law, Etc.* On the date of the Closing such Purchaser's purchase of Notes shall (a) be permitted by the laws and regulations of each jurisdiction to which such Purchaser is subject, without recourse to provisions (such as section 1405(a)(8) of the New York Insurance Law) permitting limited investments by insurance companies without restriction as to the character of the particular investment, (b) not violate any applicable law or regulation (including, without limitation, Regulation T, U or X of the Board of Governors of the Federal Reserve System) assuming the required preparation, execution, delivery and filing of the applicable Federal Reserve Board forms (such as Forms U-1 and G-1 through 4) and (c) not subject such Purchaser to any tax, penalty or liability under or pursuant to any applicable law or regulation, which law or regulation was not in effect on the date hereof. If requested by such Purchaser, such Purchaser shall have received an Officer's Certificate certifying as to such matters of fact as such Purchaser may reasonably specify to enable such Purchaser to determine whether such purchase is so permitted.

*Section 4.6. Sale of Other Notes.* Contemporaneously with the Closing the Company shall sell to each other Purchaser, and each other Purchaser, shall purchase the Notes to be purchased by it at the Closing as specified in Schedule A.

*Section 4.7. Payment of Special Counsel Fees.* Without limiting the provisions of Section 15.1, the Company shall have paid on or before the Closing the reasonable fees, charges and disbursements of the Purchasers' special counsel referred to in Section 4.4 to the extent reflected in a statement of such counsel rendered to the Company at least one Business Day prior to the Closing.



*Section 4.8. Private Placement Number.* A private placement number issued by Standard & Poor's CUSIP Service Bureau (in cooperation with the SVO) shall have been obtained for the Notes.

*Section 4.9. Changes in Corporate Structure.* The Company shall not have changed its jurisdiction of incorporation or organization, as applicable, or been a party to any merger or consolidation or succeeded to all or any substantial part of the liabilities of any other entity, at any time following the date of the most recent financial statements referred to in Schedule 5.5.

*Section 4.10. Funding Instructions.* At least three Business Days prior to the date of the Closing, each Purchaser shall have received written instructions signed by a Responsible Officer on letterhead of the Company confirming the information specified in Section 3 including (i) the name and address of the transferee bank, (ii) such transferee bank's ABA number and (iii) the account name and number into which the purchase price for the Notes is to be deposited.

*Section 4.11. Rating of Notes.* The Notes shall have been given a rating of not less than AAA by Fitch prior to the date of issuance thereof.

*Section 4.12. Proceedings and Documents.* All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents and instruments incident to such transactions shall be reasonably satisfactory to such Purchaser and its special counsel, and such Purchaser and its special counsel shall have received all such counterpart originals or certified or other copies of such documents as such Purchaser or such special counsel may reasonably request and shall receive such information as may be reasonably necessary to complete any Holder Forms.

*Section 4.13. Sale of MRP Shares; Satisfaction of Closing Conditions in 2012 Securities Purchase Agreement.* Contemporaneously with the Closing the Company shall sell to each purchaser under the 2012 Securities Purchase Agreement and each such purchaser shall purchase the MRP Shares to be purchased by it at the Closing as provided for in the 2012 Securities Purchase Agreement. The closing conditions set forth in Section 4 of the 2012 Securities Purchase Agreement shall have been satisfied to each such purchaser's satisfaction as provided therein.

## SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each Purchaser that:

*Section 5.1. Organization; Power and Authority.* The Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company has the corporate power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and

deliver this Agreement and the Notes and to perform the provisions hereof and thereof. The Company is a non-diversified, closed-end management investment company as such term is used in the 1940 Act.

*Section 5.2. Authorization, Etc.* This Agreement and the Notes have been duly authorized by all necessary corporate action on the part of the Company, and this Agreement constitutes, and upon execution and delivery thereof each Note will constitute, a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

*Section 5.3. Disclosure.* This Agreement and the documents, certificates or other writings delivered to the Purchasers by or on behalf of the Company, including through its agents, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Citigroup Global Markets Inc., in connection with the transactions contemplated hereby and identified in Schedule 5.3, and the financial statements listed in Schedule 5.5 (this Agreement and such documents, certificates or other writings and such financial statements delivered to each Purchaser prior to February 23, 2012 being referred to, collectively, as the "*Disclosure Documents*"), taken as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made. Except as disclosed in the Disclosure Documents, since November 30, 2011, there has been no change in the financial condition, operations, business or properties of the Company except changes that individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

*Section 5.4. No Subsidiaries.* The Company has no Subsidiaries as of the date of Closing.

*Section 5.5. Financial Statements; Material Liabilities.* The Company has delivered to each Purchaser copies of the financial statements of the Company listed on Schedule 5.5. All of said financial statements (including in each case the related schedules and notes) fairly present in all material respects the financial position of the Company as of the respective dates specified in such Schedule and the results of its operations and cash flows for the respective periods so specified and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments). The Company does not have any Material liabilities that are not disclosed on such financial statements or otherwise disclosed in the Disclosure Documents.

*Section 5.6. Compliance with Laws, Other Instruments, Etc.* The execution, delivery and performance by the Company of this Agreement and the Notes will not (i) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of the Company under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws, or any other Material agreement or

instrument to which the Company is bound or by which the Company or any of its properties may be bound or affected, (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Governmental Authority applicable to the Company or (iii) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to the Company, including, without limitation, the Securities Act and the 1940 Act.

*Section 5.7. Governmental Authorizations, Etc.* No consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by the Company of this Agreement or the Notes.

*Section 5.8. Litigation; Observance of Statutes and Orders.* (a) There are no actions, suits, investigations or proceedings pending or, to the knowledge of the Company, threatened against or affecting the Company or any property of the Company in any court or before any arbitrator of any kind or before or by any Governmental Authority that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(b) The Company is not in default under any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority and is not in violation of any applicable law, ordinance, rule or regulation (including without limitation Environmental Laws or the USA Patriot Act) of any Governmental Authority, which default or violation, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

*Section 5.9. Taxes.* The Company has filed all income tax returns that are required to have been filed in any jurisdiction, and has paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by them, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (i) the amount of which is not individually or in the aggregate Material or (ii) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the Company has established adequate reserves in accordance with GAAP. The Company has elected to be treated as a regulated investment company under Subchapter M of the Code and has filed its tax returns consistent with this status. As a regulated investment company, the Company must satisfy certain gross income, asset diversification, and distribution requirements under the Code. Provided that such requirements are met, the Company's federal taxable income is reduced by the amount of qualifying distributions made to shareholders, which may result in the Company having no taxable income for federal income tax purposes for a given year. As of the date hereof, the Company has not been subject to a Federal income tax audit, and no statute of limitations related to Federal income tax liabilities of the Company has run.

*Section 5.10. Title to Property; Leases.* The Company has good and sufficient title to its Material properties, including all such properties reflected in the most recent audited balance sheet referred to in Section 5.5 or purported to have been acquired by the Company after said date (except as sold or otherwise disposed of in the ordinary course of business), in each case free and clear of Liens prohibited by this Agreement, except for those defects in title and Liens

that, individually or in the aggregate, would not have a Material Adverse Effect. All Material leases are valid and subsisting and are in full force and effect in all material respects.

*Section 5.11. Licenses, Permits, Etc.* The Company owns or possesses all licenses, permits, franchises, authorizations, patents, copyrights, proprietary software, service marks, trademarks and trade names, or rights thereto, that are Material, without known conflict with the rights of others, except for those conflicts that, individually or in the aggregate, would not have a Material Adverse Effect.

*Section 5.12. Compliance with ERISA.* Neither the Company nor any ERISA Affiliate maintains, contributes to or is obligated to maintain or contribute to, or has, at any time in the past six years, maintained, contributed to or been obligated to maintain or contribute to, any employee benefit plan which is subject to Title I or Title IV of ERISA or Section 4975 of the Code. Neither the Company nor any ERISA Affiliate is, or has ever been at any time within the past six years, a “party in interest” (as defined in section 3(14) of ERISA) or a “disqualified person” (as defined in Section 4975 of the Code) with respect to any such plan.

*Section 5.13. Private Offering by the Company.* Neither the Company nor anyone acting on its behalf has offered the Notes or any similar securities for sale to, or solicited any offer to buy any of the same from, or otherwise approached or negotiated in respect thereof with, more than 10 Persons, all of which were Institutional Investors, including the Purchasers, each of which has been offered the Notes or similar securities at a private sale for investment. Neither the Company nor anyone acting on its behalf has taken, or will take, any action that would subject the issuance or sale of the Notes to the registration requirements of Section 5 of the Securities Act or to the registration requirements of any securities or blue sky laws of any applicable jurisdiction.

*Section 5.14. Use of Proceeds; Margin Regulations.* The Company will apply the proceeds of the sale of the Notes as permitted under the 1940 Act including for the refinancing of existing Indebtedness, making new portfolio investments and for general corporate purposes. Assuming the required preparation, execution, delivery and filing of the applicable Federal Reserve Board forms by the Purchasers (such as Forms U-1 and G-1 through 4, as applicable), each Purchaser’s purchase of the Notes specified under this Agreement will not cause a violation of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), Regulation X of said Board (12 CFR 224) or Regulation T of said Board (12 CFR 220).

*Section 5.15. Existing Indebtedness.* (a) Except as described therein, Schedule 5.15 sets forth a complete and correct list of all outstanding Indebtedness of the Company as of February 29, 2012 (including a description of the obligors and obligees, principal amount outstanding and collateral therefor, if any, and Guaranty thereof, if any), since which date there has been no Material change in the amounts, interest rates, sinking funds, installment payments or maturities of the Indebtedness of the Company. The Company is not in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Indebtedness of the Company and no event or condition exists with respect to any Indebtedness of the Company the outstanding principal amount of which exceeds \$5,000,000 that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such

Indebtedness to become due and payable before its stated maturity or before its regularly scheduled dates of payment.

(b) The Company is not a party to, or otherwise subject to any provision contained in, any instrument evidencing Indebtedness of the Company, any agreement relating thereto or any other agreement (including, but not limited to, its charter or other organizational document) which limits the amount of, or otherwise imposes restrictions on the incurring of, Indebtedness of the Company, except for the 1940 Act or as specifically indicated in Schedule 5.15.

*Section 5.16. Foreign Assets Control Regulations, Etc.* (a) Neither the sale of the Notes by the Company hereunder nor its use of the proceeds thereof will violate the Trading with the Enemy Act, as amended, or any of the regulations administered or enforced by the Office of Foreign Assets Control (“OFAC”) of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended from time-to-time) or any enabling legislation or executive order relating thereto (collectively, “Foreign Activities Laws”).

(b) Without limiting the foregoing, the Company (i) is not a Person described or designated in the OFAC Specially Designated Nationals and Blocked Persons List or otherwise a sanctions target pursuant to the Foreign Activities Laws (collectively, “Blocked Person”), and (ii) does not engage in any dealings or transactions with any such Blocked Person. The Company is in compliance, in all material respects, with the USA Patriot Act.

(c) No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, 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, assuming in all cases that such Act applies to the Company.

(d) No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, in violation of any U.S. anti-money laundering laws.

(e) The Company (in this Section 5.16(e) the “Company” includes any successor, subunit, parent, subsidiary, or entity under common ownership or control with the Company) shall not use any proceeds of the Notes to provide goods or services in any Iranian Sector. Upon the request of any holder of Notes, the Company shall deliver to the holders of Notes within five (5) Business Days certification or evidence confirming that the Company: (i) is not providing goods or services in any Iranian Sector; and (ii) has not been placed on a list (or notified that it may be placed on a list) by any state or Governmental Authority as providing goods or services in any Iranian Sector.

*Section 5.17. Status under Certain Statutes.* The Company is subject to regulation under the 1940 Act. The Company is, and immediately after giving effect to the issuance of the Notes and the MRP Shares will be, in compliance with the 1940 Act, including, but not limited to, all leverage provisions specified in the 1940 Act.

*Section 5.18. Ranking of Obligations.* The Company's payment obligations under this Agreement and the Notes will, upon issuance of the Notes, rank *pari passu*, without preference or priority, with all other unsecured and unsubordinated Indebtedness of the Company and senior to any mandatorily redeemable Preferred Stock issued by the Company.

## SECTION 6. REPRESENTATIONS OF THE PURCHASERS.

### *Section 6.1. Purchase for Investment.*

(a) Each Purchaser severally represents that it is purchasing the Notes for its own account or for one or more separate accounts maintained by such Purchaser or for the account of one or more pension or trust funds and not with a view to the distribution thereof, *provided* that the disposition of such Purchaser's or their property shall at all times be within such Purchaser's or their control. Each Purchaser understands that the Notes have not been registered under the Securities Act or the securities laws of any state or foreign jurisdiction and may be resold, transferred or otherwise disposed of only if registered pursuant to the provisions of the Securities Act and any applicable state or foreign securities laws or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Company is not required to register the Notes.

(b) Each Purchaser is duly authorized to enter into this Agreement, and the person signing this Agreement on behalf of the Purchaser is authorized to do so, under all applicable governing documents (*e.g.*, partnership agreement, trust instrument, pension plan, certificate of incorporation, bylaws, or operating agreement). This Agreement constitutes a legal, valid and binding agreement of the Purchaser enforceable against the Purchaser in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) Each Purchaser (and any account which is a separate legal entity contemplated in Section 6.1(a)) is an "accredited investor" as defined in Rule 501(a) promulgated under the Securities Act.

*Section 6.2. Source of Funds.* Each Purchaser severally represents that at least one of the following statements is an accurate representation as to each source of funds (a "Source") to be used by such Purchaser to pay the purchase price of the Notes to be purchased by it hereunder:

(a) the Source is an "insurance company general account" (as the term is defined in the United States Department of Labor's Prohibited Transaction Exemption ("*PTE*") 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the National Association of Insurance Commissioners (the "*NAIC Annual Statement*")) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any

other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Purchaser's state of domicile; or

(b) the Source is an insurance company separate account that is maintained solely in connection with such Purchaser's fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or

(c) the Source is either (i) an insurance company pooled separate account, within the meaning of PTE 90-1 or (ii) a bank collective investment fund, within the meaning of the PTE 91-38 and, except as disclosed by such Purchaser to the Company in writing pursuant to this clause (c), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(d) the Source constitutes assets of an "investment fund" (within the meaning of Part V of PTE 84-14 (the "*QPAM Exemption*")) managed by a "qualified professional asset manager" or "QPAM" (within the meaning of Part V of the *QPAM Exemption*), no employee benefit plan's assets that are included in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Section V(c)(1) of the *QPAM Exemption*) of such employer or by the same employee organization and managed by such QPAM, exceed 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the *QPAM Exemption* are satisfied, as of the last day of its most recent calendar quarter the QPAM does not own a 10% or more interest in the Company and no person controlling or controlled by the QPAM (applying the definition of "control" in Section V(e) of the *QPAM Exemption*) owns a 20% or more interest in the Company and (i) the identity of such QPAM and (ii) the names of all employee benefit plans whose assets are included in such investment fund have been disclosed to the Company in writing pursuant to this clause (d); or

(e) the Source constitutes assets of a "plan(s)" (within the meaning of Section IV of PTE 96-23 (the "*INHAM Exemption*")) managed by an "in-house asset manager" or "INHAM" (within the meaning of Part IV of the *INHAM Exemption*), the conditions of Part I(a), (g) and (h) of the *INHAM Exemption* are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of "control" in Section IV(d) of the *INHAM Exemption*) owns a 5% or more interest in the Company and (i) the identity of such INHAM and (ii) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company in writing pursuant to this clause (e); or

- (f) the Source is a governmental plan; or
- (g) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this clause (g); or
- (h) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of Title I of ERISA.

As used in this Section 6.2, the terms “employee benefit plan,” “governmental plan,” and “separate account” shall have the respective meanings assigned to such terms in section 3 of ERISA.

SECTION 7. INFORMATION AS TO THE COMPANY.

*Section 7.1. Financial and Business Information.* The Company shall deliver or cause to be delivered to each holder of Notes that is an Institutional Investor:

(a) *Quarterly Statements* — within 60 days (or such shorter period as is 15 days after the mailing of the Company’s quarterly report to its stockholders) after the end of each quarterly fiscal period in each fiscal year of the Company (other than the last quarterly fiscal period of each such fiscal year), duplicate copies of,

- (i) an unaudited balance sheet of the Company, as at the end of such quarter, and
- (ii) unaudited statements of operations and changes in net assets of the Company, for the portion of the fiscal year ending with such quarter,

all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by a Senior Financial Officer as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments, *provided* that the Company shall be deemed to have made such delivery of such quarterly financial statements if it shall have timely made such quarterly financial statements available on its home page on the worldwide web (at the date of this Agreement located at <http://www.kaynefunds.com>) and shall have given such holder prior notice of such availability on its home page in connection with each delivery (such availability and notice thereof being referred to as “*Electronic Delivery*”) *provided, further*, that the Company agrees also to deliver hard copies of such financial statements to any holder of Notes who has requested such delivery in writing within the time period required above, unless such written request was made within the last 10 days of the end of such time period, in which case, the Company will deliver such financial statements no later than 10 days after the conclusion of the time period required above;