

**WAIVER AND FIRST AMENDMENT
TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT**

dated as of April 14, 2020

by and among

KAYNE ANDERSON MIDSTREAM/ENERGY FUND, INC.

THE LENDERS NAMED HEREIN,

and

**JPMORGAN CHASE BANK, N.A.,
as Administrative Agent,**

**With Respect to the Third Amended and Restated Credit Agreement, dated as of February
7, 2020, by and among JPMorgan Chase Bank, N.A., as Administrative Agent,
and the other parties party thereto.**

THIS WAIVER AND FIRST AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT (the “First Amendment”), dated as of April 14, 2020, entered into pursuant to Section 9.1 of the Third Amended and Restated Credit Agreement, dated February 7, 2020 (as amended by this First Amendment, the “Agreement”), by and among (i) KAYNE ANDERSON MIDSTREAM/ENERGY FUND, INC., a Maryland corporation, registered as a closed-end management investment company under the Investment Company Act of 1940, as amended (the “Borrower”), (ii) the Lenders (as defined in the Agreement) and (iii) JPMORGAN CHASE BANK, N.A., a New York banking corporation, as administrative agent for the Lenders hereunder (in such capacity, the “Administrative Agent”);

WITNESSETH:

WHEREAS, the Borrower, as a party to the Agreement, requests that the Lenders and Administrative Agent agree to the waivers, amendments and agreements stated herein;

WHEREAS, pursuant to the terms of the Agreement, the execution and delivery of this First Amendment requires the written consent of all of the Lenders, and by the execution and delivery of this First Amendment all of the Lenders do hereby provide their written consent to this First Amendment; and

WHEREAS, the Lenders and Administrative Agent are willing to enter into this First Amendment on the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the undersigned hereby agree as follows:

SECTION 1. Defined Terms. Capitalized terms used herein and not defined herein shall have the meanings specified in the Agreement.

SECTION 2. Waivers. Subject to the terms and conditions set forth herein, the Lenders and Administrative Agent hereby waive (i) any Default or Event of Default arising under either or both of Sections 2.6(b) and 6.1 of the Agreement resulting from any failure of the Asset Coverage Ratio to be more than the Minimum Permitted Ratio as required under Section 6.1 of the Agreement on any day during the period beginning on March 16, 2020 through and including the earliest to occur of (a) May 15, 2020; (b) the first date occurring after the date hereof on which the Asset Coverage Ratio equals or is greater than the Minimum Permitted Ratio; and (c) the date the Borrower notifies the Administrative Agent in writing that the waiver period has terminated (the “Specified Period”); and (ii) any Default or Event of Default under Section 7(c) arising during the Specified Period from a failure to give notice of any Default or Event of Default resulting from a failure to comply with Section 9.7 of the Note Purchase Agreement. The foregoing waivers shall be effective only to the extent specifically set forth herein and shall not (i) be construed as a waiver of any breach, Default or Event of Default other than as specifically waived herein nor as a waiver of any breach, Default or Event of Default of which the Lenders have not been informed by the Borrower, (ii) affect the right of the Lenders to demand compliance by the Borrower with all terms and conditions of the Agreement and the other Loan Documents, except as specifically modified or waived by the terms hereof, (iii) be

deemed a waiver of any transaction or future action on the part of the Borrower requiring the Lenders' or the Required Lenders' consent or approval under the Agreement or the other Loan Documents, or (iv) except as waived hereby, be deemed or construed to be a waiver or release of, or a limitation upon, the Administrative Agent's or the Lenders' exercise of any rights or remedies under the Agreement or any other Loan Documents, whether arising as a consequence of any Default or Event of Default which may now exist or otherwise, all such rights and remedies hereby being expressly reserved.

SECTION 3. Amendments. Effective upon the satisfaction or waiver of all of the conditions set forth in Section 4 of this First Amendment, the Agreement will be amended as follows:

- (a) Section 1.1 of the Agreement will be amended by adding the following definitions thereto in alphabetical order or, if applicable, by replacing and substituting as of the date hereof the following definitions in said Section in substitution for the definitions heretofore stated in such Section:

“Aggregate Commitment”: the total of all Commitments of all Lenders, as may be reduced from time to time in accordance with the terms of this Agreement. As of the First Amendment Effective Date, the Aggregate Commitment shall be \$75,000,000.

“Applicable Margin”: at any time, with respect to each Type of Loan, the respective percentage per annum set forth below opposite the respective Asset Coverage Ratio as of the most recent weekly calculation thereof:

| Asset Coverage Ratio | Applicable Margin for Eurodollar Rate Loans¹ | Applicable Margin for Alternate Base Rate Loans¹ |
|---|--|--|
| Greater than or equal to 350% | 130 bps | 30 bps |
| Greater than or equal to 325%, but less than 350% | 180 bps | 80 bps |
| Less than 325% | 215 bps | 115 bps |

1. The Applicable Margin in each instance shall be increased by 50 bps for such time the actual Net Assets are less than Minimum Net Assets.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“First Amendment”: the First Amendment, dated as of the First Amendment Effective Date, to the Agreement, by and among the Borrower, the Administrative Agent and the Lenders party thereto.

“First Amendment Effective Date”: the date of the satisfaction or waiver of the

conditions precedent stated in Section 4 of the First Amendment.

“First Amendment Effective Date Net Assets”: Net Assets as most recently calculated prior to the First Amendment Effective Date (but in any event within 10 days of the First Amendment Effective Date).

“Minimum Net Assets”: the sum of (x) the lesser of (i) One Hundred and Twenty-Eight Million Dollars and (ii) 65% of the First Amendment Effective Date Net Assets, plus (y) 25% of net proceeds from each common stock equity issuance of the Borrower subsequent to the date of calculation of the First Amendment Effective Date Net Assets.

“Specified Period”: has the meaning set forth in Section 2(i) of the First Amendment.

- (a) Section 2.1(a) of the Agreement will be amended by adding the following sentence to the end thereof:

“Notwithstanding anything to the contrary set forth herein, no Lender shall be required or otherwise obligated to make any Revolving Credit Loans to the Borrower during the Specified Period.

- (b) Section 2.1(c) of the Agreement will be amended by replacing the final proviso thereof with the following proviso:

“provided further, however, that on and after the First Amendment Effective Date, the Borrower shall not request an increase that would cause the Aggregate Commitment after giving effect to such increase to exceed \$120,000,000, and any such requested increase shall be in integral multiples of \$5,000,000.

- (c) Schedule I to the Agreement will be amended by replacing and substituting Schedule I attached to the First Amendment for and in replacement of Schedule I to the Agreement.

SECTION 4. Conditions to Effectiveness. This First Amendment shall become effective only upon the satisfaction or waiver of all of the following conditions precedent:

(a) Executed Agreement. The Administrative Agent shall have received this First Amendment fully executed and delivered by all other parties party hereto, including, without limitation, by a duly authorized officer of the Borrower, with a counterpart for each Lender.

(b) Proceedings of the Borrower. The Administrative Agent shall have received a copy of the resolutions, in form and substance satisfactory to the Administrative Agent, of the board of directors of the Borrower authorizing the execution, delivery and performance of this First Amendment, certified by the Secretary or an Assistant Secretary of the Borrower as of the First Amendment Effective Date,

which certificate shall be in form and substance satisfactory to the Administrative Agent and shall state that the resolutions thereby certified have not been amended, modified, revoked or rescinded and are in full force and effect.

(c) Incumbency Certificate. The Administrative Agent shall have received a certificate of the Borrower, dated the First Amendment Effective Date, as to the incumbency and signature of the officer or officers of the Borrower executing the First Amendment, executed by the Secretary or any Assistant Secretary of the Borrower, satisfactory in form and substance to the Administrative Agent.

(d) Organizational Documents. The Administrative Agent shall have received true, correct and complete copies of the charter or certificate, as the case may be, and by-laws of the Borrower, certified as of the Closing Date as true, correct and complete copies thereof by the Secretary or an Assistant Secretary of the Borrower, or a certificate, executed by the Secretary or any Assistant Secretary of the Borrower, that such documents are unchanged since February 7, 2020.

(e) Legal Opinions. The Administrative Agent shall have received, with a counterpart for each Lender, the executed legal opinions of counsel to the Borrower (which shall not be "Accord" opinions) in form and substance satisfactory to the Administrative Agent and its counsel, as to First Amendment being duly authorized and the legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms.

(f) Additional Documents. The Administrative Agent shall have received such other documents, opinions, or approvals necessary to give effect to the transactions contemplated by this First Amendment as the Administrative Agent may reasonably request.

SECTION 5. Representations and Warranties. In order to induce the Lenders and Administrative Agent to enter into this First Amendment, the Borrower hereby represents and warrants to the Administrative Agent and each Lender that: (i) after giving effect to this First Amendment, the representations and warranties made by it in the Agreement are true and correct on and as of the date hereof as though made on and as of such date; (ii) after giving effect to this First Amendment, no Default or Event of Default has occurred and is continuing, or would result from the execution, delivery and performance by it of this First Amendment; (iii) it has full power, right and legal authority to execute, deliver and perform its obligations under this First Amendment; (iv) it has taken all action necessary to authorize the execution and delivery of, and the performance of its obligations under this First Amendment, including, without limitation, receiving the approval of the majority of non-interested members of its board of directors as to entering into the transactions contemplated by this First Amendment; and (v) this First Amendment constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization or moratorium or similar laws affecting the rights of creditors generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

SECTION 6. Reference to and Effect on the Documents. Except as specifically addressed herein, the Agreement and all such related documents, and all other documents, agreements, instruments or writings entered into in connection therewith, shall remain in full force and effect and are hereby ratified, confirmed and acknowledged by the Borrower.

SECTION 7. Fees and Expenses. The Borrower agrees to pay or reimburse the Administrative Agent, as stated in Section 9.5 of the Agreement, for its reasonable and documented out-of-pocket costs and expenses, including, without limitation, the reasonable fees and disbursements of up to one outside counsel to the Administrative Agent incurred by the Administrative Agent in connection with the preparation, reproduction, execution and delivery of this First Amendment and any other instruments and documents to be delivered hereunder.

SECTION 8. Governing Law; Jurisdiction and Waiver; Trial by Jury. (a) This First Amendment and the rights and obligations of the parties hereunder shall be governed by and construed and interpreted in accordance with the substantive laws of the State of New York, without regard to its conflict of laws principles.

(b) The Borrower hereby acknowledges and affirms the submission to jurisdiction and waiver provisions of Section 9.12 of the Agreement, and confirm that such terms apply to the First Amendment as if set forth herein.

(c) THE BORROWER, THE ADMINISTRATIVE AGENT AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS FIRST AMENDMENT AND FOR ANY COUNTERCLAIM THEREIN.

(d) Each Lender, by its signature below, does hereby provide its written consent to this First Amendment.

SECTION 9. Counterparts. This First Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this First Amendment by signing any such counterpart. Signature pages to this First Amendment may be delivered by facsimile transmission or by e-mail with a PDF copy or other replicating image attached, and any printed or copied version of any signature page so delivered will have the same force and effect as an originally signed signature page. This First Amendment and each of the other Loan Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof. The provisions of this First Amendment are severable and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

Delivery of an executed counterpart of a signature page of this First Amendment by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this First Amendment. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with this First Amendment and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. Without limiting the generality of the foregoing, the Borrower hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders and the Borrower, electronic images of this First Amendment or any other Loan Documents (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (ii) waives any argument, defense or right to contest the validity or enforceability of this First Amendment or the other Loan Documents based solely on the lack of paper.

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**SCHEDULE I
COMMITMENTS**

| <u>Name of Lender</u> | <u>Amount of Commitment</u> |
|--|-----------------------------|
| JPMORGAN CHASE BANK, N.A. | \$10,500,000 |
| BANK OF AMERICA, N.A. | \$10,125,000 |
| CITIBANK, N.A. | \$10,125,000 |
| SUMITOMO MITSUI BANKING CORPORATION | \$10,125,000 |
| THE BANK OF NOVA SCOTIA | \$10,125,000 |
| WELLS FARGO BANK, NATIONAL ASSOCIATION | \$10,125,000 |
| MORGAN STANLEY BANK, N.A. | \$10,125,000 |
| STIFEL BANK & TRUST | \$ 3,750,000 |
| TOTAL | \$75,000,000 |