IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
EXCO RESOURCES, INC., *et al.*,[1]	)	Case No. 18-30155 (MI)
Debtors.	)	(Jointly Administered)

OBJECTION OF OAKTREE CAPITAL MANAGEMENT, L.P. TO CONFIRMATION OF THE THIRD AMENDED SETTLEMENT JOINT CHAPTER 11 PLAN OF REORGANIZATION OF EXCO RESOURCES, INC. AND ITS DEBTOR AFFILIATES

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: EXCO Resources, Inc. (2779); EXCO GP Partners Old, LP (1262); EXCO Holdings (PA), Inc. (1745); EXCO Holding MLP, Inc. (1972); EXCO Land Company, LLC (9981); EXCO Midcontinent MLP, LLC (0557); EXCO Operating Company, LP (1261); EXCO Partners GP, LLC (1258); EXCO Partners OLP GP, LLC (1252); EXCO Production Company (PA), LLC (7701); EXCO Production Company (WV), LLC (7851); EXCO Resources (XA), LLC (7775); EXCO Services, Inc. (2747); Raider Marketing GP, LLC (6366) and Raider Marketing, LP (4295). The location of the Debtors' service address is: 12377 Merit Drive, Suite 1700, Dallas, Texas 75251.

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Oaktree Capital Management, L.P. (together with certain of its affiliates, "**Oaktree**") files this objection (the "**Objection**") to the confirmation of the *Third Amended Settlement Joint Chapter 11 Plan of Reorganization of EXCO Resources, Inc. and its Debtor Affiliates* [ECF No. 1801, as amended by ECF Nos. 1830, 1897, 1939, Ex. A and 2023] (as it may be further amended, the "**Insider Settlement Plan**")[2], and respectfully states as follows:

PRELIMINARY STATEMENT

1. Throughout the pendency of these chapter 11 cases, Oaktree has endeavored to be a constructive party and facilitate the Debtors' reorganization in a timely and cost-effective manner. Now, after essentially being excluded from the negotiations that resulted in the Insider Settlement Plan, Oaktree has been left with no choice but to oppose approval of the Insider Settlement Plan and defend its rights with respect to its 1.5 Lien Notes Claims and under the 1.5 Lien Notes Indenture. Indeed, under other circumstances, including (x) a more appropriate and realistic valuation, (y) fair treatment for Oaktree's claims and (z) the absence of efforts by the Committee to extort value from Oaktree based on the assertion of frivolous challenges to Oaktree's claims, Oaktree could have remained supportive of the Debtors' restructuring efforts. Instead, the Debtors have chosen to negotiate the terms of their restructuring almost exclusively with Fairfax and Bluescape (together, the "**Insiders**"), significant holders at all levels of the Debtors' capital structure, and the Committee, which represents an out-of-the-money constituency, to the exclusion and detriment of Oaktree.

2. Rather than engaging in productive negotiations with non-insiders such as Oaktree and proposing a chapter 11 plan within the confines of the Bankruptcy Code, the Insiders and the

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

Committee have used this chapter 11 process to exert undue influence over the Debtors (including the Insiders by wielding their influence as holders of former and future board seats and the Committee through shakedown litigation tactics) and impose a plan on Oaktree that (x) strips it of valuable rights that it has under the 1.5 Lien Indenture, and (y) provides Oaktree with materially less value on account of its claims than advertised by the Debtors and, in fact, less value than Oaktree would receive in a liquidation.

3. Indeed, the Insider Settlement Plan lays bare that the "settlement" negotiated by the Insiders, the Debtors and the Committee (the "**Insider Settlement**") is the product of creative engineering. The goal was simple: obtain the votes necessary to satisfy Bankruptcy Code section 1129(a)(10) and use an agreed-upon and inflated valuation for the Debtors' enterprise to force non-insider creditors, like Oaktree, to subsidize the Insiders' contribution to the Insider Settlement with the Committee. The settlement with the Committee was key; without it, the Insiders would not be able to achieve their objective of equitizing the oversecured 1.5 Lien Notes, and the Committee knew it could extract value from the Insiders. Otherwise, the unsecured classes would vote to reject any plan (assuming they were entitled to any value at all), and the Insiders' accepting votes would not count with respect to the 1.5 Lien Notes Class.

4. The Insider Settlement works as follows: (i) artificially inflate the Debtors' enterprise valuation to $750 million; (ii) use the inflated valuation to reduce the amount of New Common Stock required to be provided to non-insider holders of the 1.5 Lien Notes Claims (the "**Non-Insiders**"), including Oaktree, for such holders facially to receive a 100% recovery on the principal amount of their claims (Oaktree submits that the Insider Settlement Plan actually provides a recovery of just [redacted]% on the principal amount of its claims);[3] (iii) use the resulting extra

[3] The [redacted]% recovery is based on the Bonebrake Report (as defined below) and represents recoveries solely on account of the outstanding principal amount of the 1.5 Lien Notes held by Oaktree. As discussed herein and in

New Common Stock not being used to provide Non-Insiders with full value on account of the principal amount of their claims to subsidize the Insider Settlement[4] (the "**Non-Insider Subsidy**"); and (iv) use the Non-Insider Subsidy combined with Insider contributions to buy the votes of the Voting Committee Members to create an additional impaired accepting class so that the Insiders' votes on the Insider Settlement Plan overwhelm the rejecting votes of Non-Insiders to force the Non-Insiders into equity at the inflated valuation. This fourth step is critical to the execution of the proponents' creative scheme because a secured creditor can only be forced to accept equity when the class to which its claim belongs votes to accept the plan[5]—and if that class comes from accepting insiders, the plan can be confirmed only if accepted by at least one other class of claims while disregarding the votes of insiders. As Bluescape and Fairfax are insiders, their acceptance may not be included in identifying an impaired accepting class pursuant to Bankruptcy Code section 1129(a)(10).

5. The Insider Settlement Plan also fails the "best interests" test codified in Bankruptcy Code section 1129(a)(7). Indeed, the Debtors' own liquidation analysis supports the fact that Oaktree, an *oversecured* creditor, would be paid in full in cash in a liquidation under chapter 7 of the Bankruptcy Code. The New Common Stock that the Debtors propose to give Oaktree, however, is only worth [redacted]% of the principal amount of Oaktree's claims. Moreover, even

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Oaktree's response to the Partial Objection (as defined herein), Oaktree also is entitled to payment on account of the 1.5 Lien Applicable Premium (as defined herein) in respect of its 1.5 Lien Notes Claims as well as payment of its professional fees and expenses associated with enforcing its rights in respect of the 1.5 Lien Notes. The Debtors have objected to Oaktree's entitlement to both the 1.5 Lien Applicable Premium and the payment of Oaktree's fees and expenses, the entitlement to which is provided expressly in the 1.5 Lien Indenture.

[4] Based on the valuation contained in the Bonebrake Report, the difference between the value to which Oaktree is entitled on account of the principal amount of its 1.5 Lien Notes Claims and the value of the New Common Stock it is receiving is approximately $[redacted] million (or [redacted]% of the New Common Stock), exclusive of Oaktree's rights to payment of the 1.5 Lien Applicable Premium and reimbursement of its fees and expenses. The value the Debtors ascribe to the Settlement Contribution, and hence to the Non-Insider Subsidy, is [redacted]

[5] Bankruptcy Code section 1129(b)(2)(A)(iii) requires that secured creditors receive the "indubitable equivalent" of their claims, and "equity securities of the debtor" are not deemed to be the indubitable equivalent. 11 U.S.C. § 1129(b)(2)(A)(iii); H.R. Rep. 95-595 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6544.

if the New Common Stock proposed to be provided to Oaktree on account of its 1.5 Lien Notes Claims were worth 100% of the principal amount of Oaktree's claims (which it is not), the fact that it will be diluted by the as-yet-unspecified Management Incentive Plan, and the fact that the Debtors will not distribute *anything* to Oaktree until the completion of currently-uncommenced litigation over the allowance of Oaktree's claims and liens, means that, by definition, Oaktree will not be receiving and retaining a 100% recovery on the principal amount of its claims under the Insider Settlement Plan, whereas a liquidation would provide such a full recovery. The Insider Settlement Plan fails on this basis alone.

6. In addition to the foregoing fatal flaws, the Insider Settlement Plan cannot be confirmed because it:

- violates Bankruptcy Code sections 1129(a)(1), 1122 and 1123(a)(4) either by (i) improperly classifying Oaktree with the Insiders, who are to receive additional plan consideration in the form of releases, exculpation, payment of their fees and expenses and indemnification, despite providing no additional value to the estates, or (ii) classifying Oaktree and the Insiders together and providing Oaktree with disparate and worse treatment than the Insiders;
- fails to provide for the payment of Oaktree's fees and expenses and the 1.5 Lien Applicable Premium or reserve consideration in respect thereof;
- fails to ensure the survival of the 1.5 Lien Notes Indenture and related liens and the requirement contained therein that the Debtors reimburse Oaktree for fees and expenses to be incurred with respect to the forthcoming challenges to its claims and liens post-Effective Date;
- allows the votes of the Insiders in Class 3 to be counted when they should be designated pursuant to Bankruptcy Code section 1126(e), and treats Class 3 as an accepting class when it should be treated as a rejecting class, because the Insiders' votes are based on ulterior motives extrinsic to the general Class 3 recovery under the Insider Settlement Plan, and the distributions to be provided to Class 3 do not satisfy the requirements of Bankruptcy Code section 1129(b)(2)(A) for a rejecting class of secured claims;
- violates the terms of the Intercreditor Agreement governing priority between the 1.5 Lien Noteholders and the 1.75 Lien Term Lenders; and
- improperly provides for the payment of the professional fees of individual members of the Official Committee of Unsecured Creditors.

7. In sum, the Insider Settlement Plan cannot be confirmed in its current form. Accordingly, Oaktree, which has no desire to see these Debtors fail but is entitled to be treated

fairly on account of its claims in accordance with the applicable provisions of the 1.5 Lien Notes Indenture and the Bankruptcy Code, respectfully requests that the Court deny confirmation of the Insider Settlement Plan or, in the alternative, condition confirmation on modifications necessary to account for the objections set forth herein.

BACKGROUND

Oaktree

8. Oaktree is a leading global alternative investment management firm. Certain investment funds managed by Oaktree invested in EXCO beginning in 2007. Pursuant to a letter agreement that EXCO entered into with these funds in March 2007, Oaktree had the right to nominate one director for election at any annual meeting of shareholders so long as Oaktree beneficially owned at least 10 million shares of common stock. An Oaktree entity currently holds, collectively: $41,732,848 of 1.5 Lien Notes (as defined below); 2,831,542 Warrants (as defined below); and 2,051,580 common shares of EXCO, representing an approximately 9.5% stake in EXCO.

The Debtors' Refinancing Transactions in 2015 and 2017

9. EXCO, which owns and operates onshore oil and gas assets in the United States, was deeply affected by the recent sustained downturn in commodity prices. *See Declaration of Tyler S. Farquharson, Chief Financial Officer and Treasurer of Exco Resources, Inc., In Support of Chapter 11 Petitions and First Day Motions*, ¶ 6 [ECF No. 29] (the "**First Day Declaration**"). In response to the downturn and resulting reduced cash flow from operations, the Debtors took a number of steps beginning in 2015 to rationalize capital expenditures and increase production, culminating in refinancings completed in 2015 and 2017 (the "**2015 Refinancing Transactions**" and the "**2017 Refinancing Transactions**," and, collectively, the "**Refinancings**"). *Id.* ¶¶ 7-8.

10. In the 2015 Refinancing Transactions, EXCO converted unsecured debt into second lien debt at a lower interest rate and at a discount to par. Specifically, EXCO closed (i) a 12.5% senior secured second lien term loan with Fairfax in the aggregate principal amount of $300 million on October 26, 2015; and (ii) a 12.5% senior secured second lien term loan with certain of the Debtors' then-unsecured noteholders in the aggregate principal amount of $291.3 million on October 26, 2015 and $108.7 million on November 5, 2015, pursuant to the Second Lien Credit Agreement dated as of October 19, 2015. First Day Decl. ¶ 42.

11. The 2017 Refinancing Transactions resulted from EXCO's continuing need for additional liquidity. *See* EXCO Resources, Inc., Current Report (Form 8-K), Ex. 4.1, 99.1 (Mar. 15, 2017); First Day Decl. ¶¶ 67, 70. A proposal for new debt financing made by Fairfax in connection with an open-market search on December 12, 2016 allowed EXCO the flexibility to pay interest in-kind, and provided for a loan commitment fee in the form of warrants (the "**Warrants**"). First Day Decl. ¶¶ 35, 54; *see Disclosure Statement for the Settlement Joint Chapter 11 Plan of Reorganization of EXCO Resources, Inc. and its Debtor Affiliates* [Docket Nos. 1103, 1179, 1210, 1217, 1225 and 1233] (as modified, amended and supplemented from time to time, the "**Disclosure Statement**") at 42. EXCO's board of directors (the "**Board**"), including its independent director and all other unaffiliated directors, in reliance on the Seaport Global fairness opinion and their own assessments, approved the Fairfax transaction on March 6, 2017. EXCO Resources, Inc., Current Report (Form 8-K), Ex. 4.1, 99.1 (Mar. 15, 2017).

12. On March 15, 2017, the Debtors issued $300 million in 1.5 lien notes to lenders and other noteholders (the "**1.5 Lien Notes**" and the holders thereof, the "**1.5 Lien Noteholders**") under the 1.5 Lien Notes Indenture[6] bearing interest at a rate of either 8% per annum payable in

[6] The "**1.5 Lien Notes Indenture**" is that certain indenture dated as of March 15, 2017, among EXCO Resources, Inc., as Issuer, each of the Guarantors named therein, and Wilmington Trust, National Association as

cash or 11% per annum paid-in-kind, at EXCO's option. First Day Decl. ¶ 68. Also on March 15, 2017, the Debtors exchanged $683 million of second lien term loans for a like amount of loans under a 1.75 lien term loan facility (the "**1.75 Lien Term Loan**")[7] that also included the option to pay interest in-kind. *Id.* The 2017 Refinancing Transactions increased the Debtors' pro forma liquidity by approximately $116 million as of the transaction dates and had the potential to reduce cash interest payments up to $109 million per year. *Id.*

Oaktree's Claims

13. Oaktree, which had no involvement in the 2015 Refinancing Transactions and was involved in the 2017 Refinancing Transactions only in a late stage in the process, is a holder of 1.5 Lien Notes but not the 1.75 Lien Debt. Specifically, certain Oaktree entities currently hold, collectively, $41,732,848 of 1.5 Lien Notes issued pursuant to the 1.5 Lien Notes Indenture.

14. The Indenture Trustee filed proof of claim 20105, on behalf of itself and each holder of 1.5 Lien Notes, for claims under the 1.5 Lien Notes Indenture in the amount of not less than $345,490,255.73 (the "**1.5L POC**"). The 1.5L POC asserts that, in addition to principal and interest, as part of the claims, the Debtors must also pay certain premiums (the "**1.5 Lien Applicable Premium**") in an amount not less than $28,531,915.73. In addition, the 1.5L POC generally asserts claims for payment of fees and expenses of the Indenture Trustee and 1.5 Lien Noteholders, as applicable, that are required to be paid in accordance with Sections 5.12 and 9.01 of the 1.5 Lien Notes Indenture.

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indenture trustee and collateral agent (the "**Indenture Trustee**"). A true and accurate copy of the 1.5 Lien Notes Indenture is attached hereto as **Exhibit A**.

[7] The 1.75 Lien Term Loan is governed by that certain 1.75 Lien Term Loan Credit Agreement dated as of March 15, 2017 among Exco Resources, Inc., as Borrower, certain subsidiaries of Borrower, as Guarantors, the Lenders party thereto, Wilmington Trust, National Association, as administrative agent, and Wilmington Trust, National Association, as Collateral Trustee (the "**1.75 Lien Credit Agreement**"). A true and accurate copy of the 1.75 Lien Credit Agreement is attached hereto as **Exhibit B**.

The Debtors' Partial Claim Objection

15. On May 2, 2019, the Debtors filed the *Debtors' Partial Objection to Proofs of Claim Nos. 20105 & 20146 Asserting Entitlement to Makewhole Premiums and Attorneys' Fees by Non-Settling 1.5 and 1.75 Lien Noteholders* [ECF No. 1901] (the "**Partial Claim Objection**").

16. On May 6, 2019, the Committee filed the *Joinder of the Official Committee of Unsecured Creditors to the Debtors' Partial Objection to Proofs of Claim Nos. 20105 & 20146 Asserting Entitlement to Makewhole Premiums and Attorneys' Fees by Non-Settling 1.5 and 1.75 Lien Noteholders* [ECF No. 1914].

17. Pursuant to the Partial Claim Objection, the Debtors assert that, among other things, the 1.5 Lien Applicable Premium was never triggered under either state or bankruptcy law and, therefore, is not allowable.[8] Partial Claim Obj. ¶ 2.

18. The Partial Claim Objection further asserts that the 1.5 Lien Noteholders are not entitled to payment of fees and expenses absent a settlement with the Debtors. *Id.* ¶ 6.

19. The Debtors acknowledge that they have agreed to pay the legal fees of the Insiders as part of the Insider Settlement. *Id.* ¶ 2 & n.3.

20. Pursuant to the *Stipulation and Agreed Order Concerning the Manner of Resolving Debtors' Partial Objections to Proofs of Claim No. 20105 and 20146 [Docket No. 1901]* [ECF No. 2011], the Debtors, the Committee, the Indenture Trustee, Oaktree and LSP have agreed that a hearing on the Partial Claim Objection will be conducted concurrently with the hearing on confirmation of the Insider Settlement Plan.

[8] The Partial Claim Objection objects to the 1.5 Lien Applicable Premium under the 1.5 Lien Notes Indenture. However, the Debtors acknowledge that the Partial Claim Objection only applies to the Non-Settling 1.5 Lien Noteholders—namely Oaktree and LSP—as a result of the settlement with the Insiders.

21. Concurrently herewith, Oaktree has filed the *Response of Oaktree Capital Management, L.P. to Debtors' Partial Objection to Proofs of Claim Nos. 20105 & 20146 Asserting Entitlement to Makewhole Premiums and Attorneys' Fees by Non-Settling 1.5 and 1.75 Lien Noteholders* (the "**Oaktree Claim Objection Response**"). Pursuant to the Oaktree Claim Objection Response, Oaktree sets forth the factual and legal reasons why (x) the 1.5 Lien Applicable Premium is due and owing and (y) Oaktree is entitled to the reimbursement of its fees and expenses in connection with these chapter 11 cases, including any fees and expenses that it may incur following the Debtors' emergence from chapter 11 defending any objection to, or litigation regarding, the allowance of Oaktree's claims and liens in respect of the 1.5 Lien Notes. Oaktree expressly incorporates the entirety of the Oaktree Claim Objection Response herein by reference.

The Standing Motion, Proposed Complaint and the Absence of Allegations Against Oaktree and Ford

22. On February 15, 2019, with the period in which to bring challenges to prepetition secured obligations (the "**Challenge Period**") set to expire, the Committee filed the *Motion of the Official Committee of Unsecured Creditors* (the "**Committee**") *for (I) Leave, Standing, and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of the Debtors' Estates and (II) Exclusive Settlement Authority* [ECF No. 1624] (the "**Standing Motion**" and the "**Proposed Complaint**," attached thereto as Exhibit B and as subsequently amended), asserting twenty-three causes of action relating to the 2017 Refinancing Transactions against secured lenders Fairfax, Bluescape, Oaktree and LSP, as well as current and former directors and officers of the Debtors, including B. James Ford ("**Ford**"), whom Oaktree previously nominated to the Board. The Proposed Complaint describes an alleged "scheme" driven by "large insider funds that controlled EXCO [and] prioritized their financial interests over EXCO's best interests

through manipulation of EXCO's Board and Board decisions." Prop. Compl. ¶ 1. Through the Proposed Complaint, the Committee essentially contended that the Debtors should have filed for bankruptcy years ago rather than enter into the Refinancings, which the Committee characterized as an insider-driven "scheme" that "led to EXCO's bankruptcy." Prop. Compl. ¶ 15.

23. The Proposed Complaint included allegations against Fairfax and Bluescape, as well as Oaktree, Ford and LSP. As described further below, the causes of action alleged in the Proposed Complaint against Oaktree and LSP are being preserved under the Insider Settlement Plan.

The Prior Plans

24. On October 1, 2018, the Debtors filed the Settlement Joint Chapter 11 Plan of Reorganization of EXCO Resources, Inc. and Its Debtor Affiliates [ECF No. 1102] (the "**Original Plan**") and the related disclosure statement [ECF No. 1103, as amended by ECF Nos. 1179, 1210, 1217, 1225 and 1233].

25. On October 29, 2018, the Debtors filed the Settlement Joint Chapter 11 Plan of Reorganization of EXCO Resources, Inc. and Its Debtor Affiliates [ECF No. 1178, as amended by ECF Nos. 1209, 1216, 1232 and 1391] (the "**Second Plan**"). Pursuant to the Second Plan, Holders of Allowed 1.5 Lien Notes Claims, including Oaktree, were to receive payment in Cash in the amount equal to the principal amount and accrued postpetition interest outstanding under the 1.5 Lien Notes Indenture from the proceeds of the Exit Term Loan Facility. Second Plan, Art. III.B.3. In addition, Oaktree was to receive reimbursement of all fees and expenses it had incurred in connection with these chapter 11 cases, which are required to be paid pursuant to the terms of the 1.5 Lien Notes Indenture. *See* Second Plan, Art. IV.Q; 1.5 Lien Notes Indenture § 9.01. In exchange for the foregoing treatment and to facilitate the Debtors' reorganization, Oaktree agreed

to waive its entitlement to payment of its allocable share of the 1.5 Lien Applicable Premium. Second Plan, Art. III.B.3.

26. The confirmation hearing for the Second Plan was scheduled for December 10, 2019. After the hearing was adjourned several times, the Debtors announced that they were unable to secure exit financing to fund the Second Plan, and the Court adjourned the hearing date to a date to be determined.

The Insider Settlement Plan

27. On May 2, 2019, the Debtors filed the *Third Amended Settlement Joint Chapter 11 Plan of Reorganization of Exco Resources, Inc. and its Debtor Affiliates* [ECF No. 1897] (including prior and subsequent versions, the "**Insider Settlement Plan**").

28. Pursuant to the Insider Settlement Plan, which is premised upon the Insider Settlement (discussed more fully below), Oaktree's claims are classified in Class 3 as 1.5 Lien Notes Claims. Insider Settlement Plan, Art. III.A.1. As a claimant in Class 3, the 1.5 Lien Notes Claims held by any Settling Lender (*i.e.*, the Insiders) or any Supporting Creditor are Allowed, and each Class 3 claimant shall receive its Pro Rata share of the 1.5 Lien Claims Recovery. Insider Settlement Plan, Art. III.B.3.

29. In addition, the Insider Settlement Plan provides that each of the Settling Lenders and each of the Supporting Creditors shall be Released Parties released from any and all claims and Causes of Action asserted on behalf of the Debtors,[9] be Exculpated Parties exempted from

[9] Insider Settlement Plan, Art. I.A.143; *Id.*, Art. VIII.C.

liability on the basis of their conduct in the case,[10] have their fees and expenses paid[11] and receive indemnification[12] from the Reorganized Debtors.

30. As Oaktree is not a Supporting Lender or party to the Insider Settlement, Oaktree is not provided a release, exculpation, payment of its fees or expenses (notwithstanding the provisions of the 1.5 Lien Notes Indenture requiring such payment[13]) or indemnification under the Insider Settlement Plan, causes of action against Oaktree are preserved and transferred to the Unsecured Claims Distribution Trust and Oaktree's recovery as a Class 3 claimant is limited to its pro rata share of the 1.5 Lien Claims Recovery, defined in the Insider Settlement Plan as 61.2% of New Common Stock subject to dilution by the Management Incentive Plan—which will not be adopted and quantified until after the Effective Date of the Insider Settlement Plan.

31. The Insider Settlement Plan also withholds distributions to Oaktree pending the outcome of litigation on the causes of action retained thereunder by the Unsecured Claims Distribution Trust, but does not provide a schedule by which such litigation will be completed. Insider Settlement Plan, Art. VI.D.

32. The Insider Settlement Plan is based upon a total enterprise valuation range of $650 million – $850 million, with a midpoint of $750 million. Disclosure Statement, Ex. F – Valuation Analysis, at 5. As demonstrated by the opinions of Kevin Bonebrake of Lazard Frères & Co. LLC as expressed in his report dated May 26, 2019 (the "**Bonebrake Report**")[14], the $750 million valuation is based on flawed methodology that, when corrected, shows that the Debtors' total enterprise value is approximately $[redacted] million—using a conservative but industry standard

[10] *Id.*, Art. I.A.88; *Id.* Art. VIII.E.

[11] *Id.*, Art. IV.S.

[12] *Id.*, Art. IV.V.

[13] *See* 1.5 Lien Notes Indenture § 9.01; Oaktree Claim Objection Response ¶¶ 49–54.

[14] A copy of the Bonebrake Report is attached hereto as **Exhibit C**.

approach—meaning that Oaktree's recovery under the Insider Settlement Plan is at least [redacted]% less than the principal amount of its claims.[15]

33. Under the more reasonable, though possibly still inflated, valuation reflected in the Bonebrake Report with a midpoint of approximately $[redacted] million, Oaktree would receive a 100% recovery on the principal amount of its claims only if it received [redacted]% of New Common Stock on a fully diluted basis (assuming the Debtors otherwise were able to satisfy applicable provisions of section 1129), as compared to the 8.1% of New Common Stock Oaktree is forced to receive under the Insider Settlement Plan, which will be subject to dilution by the forthcoming Management Incentive Plan. Oaktree also is entitled to reimbursement of its fees and expenses pursuant to Section 9.01 of the 1.5 Lien Notes Indenture and payment of the 1.5 Lien Applicable Premium pursuant to Section 3.07 of the 1.5 Lien Notes Indenture.

34. Although Oaktree is not receiving 100% recovery on its oversecured claims, claimants in Classes 4, 5, 6 and 7—classes of claims junior in priority to Oaktree's 1.5 Lien Claims—are receiving a recovery under the Insider Settlement Plan. Ordinarily, the receipt by junior classes of a recovery before a senior class is paid in full is permitted only when the senior class votes to accept the subject chapter 11 plan. As discussed herein and in the Oaktree Designation Motion (as defined herein), the acceptance of the Insider Plan by the 1.5 Lien Notes Class is based solely on the votes of the Insiders, votes which should be designated.

35. The Liquidation Analysis supporting the Insider Settlement Plan projects that Oaktree would receive a 100% recovery in cash on its claims if the Debtors' chapter 11 cases were

[15] The $[redacted] million midpoint reflected in the Bonebrake Report was based on oil and natural gas pricing as of March 29, 2019—the same date used by the *Expert Report of Michael O'Hara* dated April 29, 2019. [redacted], Oaktree reserves the right to update the Bonebrake Report to reflect current commodity pricing and such update could have a material effect on valuation.

converted to chapter 7 in both the high and mid case, while projecting that Oaktree would receive an 86% cash recovery on its claims in the low recovery case if these cases were converted to chapter 7. Importantly, however, the Liquidation Analysis "does not take into account potential claims the 1.5 Lien Noteholders may assert for diminution in value to ensure that they receive a full recovery." Disclosure Statement Ex. D - Liquidation Analysis, at 3 n.2. Indeed, if the cases were converted to chapter 7 and the monetization of the collateral securing the 1.5 Lien Notes Claims were insufficient to pay Oaktree in full, in cash, on account of its 1.5 Lien Notes, Oaktree would be entitled to an adequate protection claim under section 507(b) of the Bankruptcy Court that would need to be satisfied in full before any junior creditors (*i.e.*, the holders of the 1.75 Lien Term Loan Claims or unsecured creditors) would be entitled to receive any recovery on account of their claims. The Liquidation Analysis also assumes that the 1.5 Lien Applicable Premium is not allowed and that Oaktree is not paid its fees and expenses, both of which should be allowed as set forth in the Oaktree Claim Objection Response. See, generally, Disclosure Statement Ex. D – Liquidation Analysis. Finally, the Liquidation Analysis also assumes that the Insiders would make the Settlement Contribution to the unsecured classes, even in a hypothetical chapter 7 liquidation.

The Insider Settlement

36. At the heart of the Insider Settlement Plan is the "Secured Lender Settlement" between the Debtors, the Insiders and the Committee. The so-called "Secured Lender Settlement" is more aptly named the "**Insider Settlement**" as it does not include any non-insider secured lenders and plainly is intended to benefit the Insiders while unfairly harming true, third party secured creditors, like Oaktree, which owns approximately 13% of the Debtors' 1.5 Lien Notes.

37. The Insider Settlement Plan is premised on the artificially inflated $750 million total enterprise value and proposes to provide the 1.5 Lien Noteholders with 61.2% of the New Common Stock on account of the principal amount of their oversecured claims (before taking into

account the Insider Settlement) and the 1.75 Lien Term Lenders with 38.8% of the New Common Stock on account of their claims.

38. The Insiders hold 73.6% of the 1.5 Lien Notes and 67.4% of the 1.75 Lien Term Loan Claims. Accordingly, the inflated valuation of the New Common Stock that shifts value from the 1.5 Lien Noteholders to the 1.75 Lien Noteholders has a much more limited effect on the Insiders, who receive, based on the inflated valuation, excess value from their 1.75 Lien position, than it does on Oaktree.

39. Importantly, the Insider Settlement Plan acknowledges that unsecured creditors are fully out of the money and, absent the Insider Settlement, would not be entitled to any real recovery on account of their claims. *See, e.g.*, Insider Settlement Plan Art. I.A.162 (definition of "Settlement Contribution") (acknowledging that the Settlement Contribution "fund[s] recoveries to Holders of allowed Unsecured Claims in Classes 5, 6, and 7"). Indeed, other than interests in the Unsecured Claims Distribution Trust that will pursue frivolous litigation against Oaktree and LSP, the recovery to unsecured creditors consists solely of the Settlement Contribution. Insider Settlement Plan Art. I.A.184.

40. The Insider Settlement serves to enable the Debtors and the Insiders to effectively cram overvalued equity on Oaktree on account of oversecured claims (which would not otherwise be permissible) while at the same time satisfying Bankruptcy Code section 1129(a)(10) through "settling" the Committee's purported claims against the Insiders for the Settlement Contribution and buying non-insider unsecured creditor votes to accept the Insider Settlement Plan.

41. In addition, the Insider Settlement grants Fairfax and Bluescape releases, exculpation, indemnification and payment of their fees and expenses with respect to the claims that were the subject of the Proposed Complaint.

42. In short, by fashioning the Insider Settlement Plan around an insider-driven settlement and an inflated valuation, the Debtors have provided their Insiders with both sufficient settlement currency for the release of Secured Claim Challenges against them and the means to underpay Oaktree's 1.5 Lien Notes Claims.

The Designation Motions

43. On May 17, 2019, LSP filed the *Motion of LSP Investment Advisors, LLC, Gen IV Investment Opportunities, LLC, and Vega Asset Partners, LLC Pursuant to 11 U.S.C. §§ 105(a) and 1126(e) for Entry of Order Designating Votes of Fairfax Financial Holdings Limited, Bluescape Resources Company LLC, Cross Sound Management LLC, DRW Securities, LLC, REME, LLC, and their Affiliates* [ECF No. 1952] (the "**LSP Designation Motion**"). The LSP Designation Motion asserts that the votes of the Insiders in support of the Insider Settlement Plan should be designated as in bad faith pursuant to Bankruptcy Code section 1126(e), including because such votes are motivated by extrinsic factors such as securing relief not available to other creditors in the form of Debtor releases under Article VIII of the Insider Settlement Plan. The LSP Designation Motion also asserts that the votes of certain Committee members (the "**Voting Committee Members**") should be designated, including because such votes are in violation of those entities' fiduciary duties as Committee members.

44. On May 28, 2019, Oaktree filed *Oaktree Capital Management, L.P.'s (I) Joinder in the Motion of LSP Investment Advisors, LLC, Gen IV Investment Opportunities, LLC, and Vega Asset Partners, LLC Pursuant to 11 U.S.S. §§ 105(a) and 1126(e) for Entry of an Order Designating Votes of Fairfax Financial Holdings Limited, Bluescape Resources Company LLC, Cross Sound Management LLC, DRW Securities, LLC, REME, LLC, and Their Affiliates and (II) Emergency Supplemental Motion in Support Thereof* [ECF No. 2008] (the "**Oaktree Designation Motion**" and, together with the LSP Designation Motion, the "**Designation Motions**"). The

Oaktree Designation Motion joins in the arguments presented in the LSP Designation Motion. In addition to those arguments, the Oaktree Designation Motion seeks designation of the Insiders' and Voting Committee Members' votes as not cast in good faith on the ground that the Insiders and the Voting Committee Members are, together, motivated by a scheme to acquire and transfer the Non-Insider Subsidy, thereby obtaining value at the expense of Oaktree and using that same value to purchase the votes of the unsecured classes, including the Voting Committee Members as knowing participants in this scheme, and obtain the votes necessary to satisfy section 1129(a)(10) of the Bankruptcy Code and avoid the limitations on the ability to cram down equity on the Non-Insider 1.5 Lien Noteholders under section 1129(b) of the Bankruptcy Code.

45. The Designation Motions are scheduled to be heard in connection with the hearing on confirmation of the Insider Settlement Plan.

OBJECTION

46. The Insider Settlement Plan cannot be confirmed in its current form for several reasons. *First*, the Insider Settlement Plan was not proposed in good faith, in violation of Bankruptcy Code section 1129(a)(3), because it (i) is based upon an inflated "settlement" valuation of the equity to be distributed under the Insider Settlement Plan, thereby depriving the 1.5 Lien Noteholders of value to which they are entitled as oversecured creditors, and (ii) fails to provide Oaktree and other Non-Insiders with the same treatment provided to the Insiders in Class 3. *Second*, by the Insider Settlement, the Debtors created three artificial impaired accepting classes to enable the Insiders' votes to be counted—votes that should be disregarded pursuant to Bankruptcy Code section 1129(a)(10)—to carry Class 3 over the objection and rejection of non-insider Class 3 claimants. *Third*, the Insider Settlement Plan does not satisfy the best interests of creditors test as it provides the Non-Insiders, including Oaktree, less than they would receive in a liquidation under chapter 7 of the Bankruptcy Code, in violation of Bankruptcy Code section

1129(a)(7). *Fourth*, the Insider Settlement Plan strips Oaktree of its rights under the 1.5 Lien Notes Indenture to payment of the Applicable Premium and reimbursement of their fees and expenses. *Fifth*, the Insider Settlement Plan does not satisfy Bankruptcy Code section 1129(a)(1) because the Insider Settlement fails to comply with the subordination provisions of the Intercreditor Agreement[16] and, consequently, violates Bankruptcy Code section 510(a). *Sixth*, the Insider Settlement Plan proposes to make impermissible payments to individual Committee members for professional fees that are not compensable under applicable law. *Finally*, the Insider Settlement Plan seeks to cancel the 1.5 Lien Notes Indenture as of the Effective Date, thereby depriving Oaktree of its entitlement to fees and expenses incurred in connection with enforcement of the terms of the indenture which the parties have agreed to litigate *subsequent* to the Effective Date. Absent modification of the Insider Settlement Plan to remedy these deficiencies, the Insider Settlement Plan cannot be confirmed.

I. The Insider Settlement Plan Was Not Proposed in Good Faith and, Thus, Violates Bankruptcy Code Section 1129(a)(3)

47. Bankruptcy Code section 1129(a)(3) provides that a plan may not be confirmed unless it was "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). While "good faith" is not defined in the Bankruptcy Code, it is generally agreed that section 1129(a)(3) "speaks more to the process of plan development than to the content of the plan." *In re Bush Indus., Inc.*, 315 B.R. 292, 304 (Bankr. W.D.N.Y. 2004). The inquiry required by section 1129(a)(3) "is fact-specific, fully empowering the bankruptcy courts to deal with

[16] "Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of October 26, 2015, and amended as of March 15, 2017, among JPMorgan Chase Bank, N.A., as Original Priority Lien Agent (as defined therein), and Wilmington Trust, National Association, as Second Lien Collateral Trustee (as defined therein), and Wilmington Trust, National Association, as Original Third Lien Collateral Trustee (as defined therein). The "Second Lien" obligations referred to in the Intercreditor Agreement are the 1.5 Lien Notes (Intercreditor Agreement at 16), and the "Third Lien" obligations referred to in the Intercreditor Agreement include the 1.75 Lien Term Loan claims (Intercreditor Agreement at 19). A true and accurate copy of the Intercreditor Agreement is attached hereto as **Exhibit D**.

chicanery." *Western Real Estate Equities, L.L.C. v. Village at Camp Bowie I, L.P. (In re Village at Camp Bowie I, L.P.)*, 710 F.3d 239, 248 (5th Cir. 2013) ("*Camp Bowie II*").

48. The absence of good faith is evident in the proponents' approach to the Insider Settlement Plan. *First*, the Debtors, the Insiders, the Committee and the Committee members have agreed to accept an outcome-driven, inflated "settlement" valuation of the equity to be distributed under the Insider Settlement Plan, thereby redirecting value from non-insider holders of the 1.5 Lien Notes to the Insiders' position in the 1.75 Lien Debt and also creating excess value to use as settlement currency. *Second*, the Debtors, the Insiders, the Committee and the Committee members have artificially engineered the structure of the Insider Settlement Plan and the Insider Settlement to circumvent the requirements of Bankruptcy Code sections 1129(a)(10) and 1129(b), thereby suppressing the rights of Oaktree and others to insist on the treatment to which they are entitled as secured creditors. *Third*, the Insider Settlement Plan is premised on the mischaracterization of releases, exculpation, indemnification and payment of fees and expenses granted by the Debtors to the Insiders in exchange for their claims as something other than plan consideration, a transparent scheme to evade the requirement of equal treatment under Bankruptcy Code section 1123(a)(4).

A. The Debtors' Settlement Valuation is Inflated

49. The Debtors' $750 million total enterprise valuation, providing $516 million of distributable value, is artificially inflated to engineer the Insider Settlement, and the resulting impaired accepting classes, in an effort to force Oaktree and other non-settling 1.5 Lien Noteholders to accept equity on account of their oversecured claims at a rate that will not result in payment in full on account of the principal amount of their 1.5 Lien Notes (let alone the 1.5 Lien Applicable Premium and reimbursement of fees and expenses to which such holders are entitled).

50. Pursuant to the Insider Settlement, the Insiders, the Debtors, the Committee and the Committee members agreed to support the Insider Settlement Plan that provides (i) 1.5 Lien Noteholders—a class dominated by Insiders who can carry Class 3 claims with their plan votes—with 61.2% of the equity, an amount that only pays Oaktree [redacted]% of the principal amount of its claims, not 100% as provided in the Disclosure Statement,[17] (ii) 1.75 Lien Term Lenders with 38.8% of equity—a class dominated by Insiders who hold 67.4% of the claims in Class 4, and (iii) holders of Allowed Claims in Classes 5, 6 and 7—Second Lien Term Loan Facility Claims, Unsecured Notes Claims and GUC Claims, respectively—their *pro rata* share of the Unsecured Claims Recovery—an amount "gifted" by the Insiders. Significantly, other than speculative interests in the Unsecured Claims Distribution Trust, the Unsecured Claims Recovery consists solely of the Settlement Contribution of 11.6% of the New Common Stock, which the Insiders otherwise would be entitled to receive as 1.5 Lien Noteholders based on the $750 million enterprise valuation figure.

51. Yet, this "gift" is not funded solely by the Insiders. Rather, pursuant to the Insider Settlement Plan, the "gift" is subsidized with [redacted]% of New Common Stock that should be paid to Oaktree—a subsidy that would not be possible but for the Debtors' inflated valuation of $750 million and which results in a [redacted]% reduction of Oaktree's recoveries on account of the principal amount of its claims. In other words, pursuant to this scheme, Oaktree is forced to subsidize the Insider Settlement without receiving any of the benefits derived therefrom, as the Insider Settlement Plan provides the additional treatment of releases, exculpation, fees and indemnities (among other benefits) to the Insiders on account of their 1.5 Lien Notes Claims without providing similar treatment to Oaktree (or to any other Non-Insiders) on account of its 1.5 Lien Notes Claims.

[17] Disclosure Statement Ex. D – Liquidation Analysis, at 5.

Significantly, the Committee has acknowledged that 1.5 Lien Noteholders will not be paid in full under the Insider Settlement Plan. June 3, 2019 David Dunn Dep. Tr. 78:23–79:6 (Committee 30(b)(6) designee conceding that the 1.5 Lien Noteholders will receive "impaired treatment" and "are not being paid in full.").

52. Using a more reasonable, though possibly still inflated, valuation with a midpoint of approximately of $[redacted] million supported by the Bonebrake Report—a valuation at $[redacted] million less than the Debtors' flawed $750 million valuation—Oaktree would receive a 100% recovery on the principal amount of its claims[18] in the form of [redacted]% of New Common Stock (assuming the Debtors otherwise were able to satisfy applicable provisions of section of 1129). Thus, to fund the Insider Settlement—a settlement which Oaktree opposes—Oaktree is required to give up over [redacted]% of the New Common Stock (on a fully diluted basis)[19] it otherwise is entitled to receive—and thereby fund approximately [redacted]% of the entire Settlement Contribution of 11.6% of New Common Stock.

53. This scheme cannot be said to be the product of good faith as the success of the Insider Settlement relies upon the Debtors' artificially inflated valuation of $750 million. *See In re Sandy Ridge Dev. Corp.*, 881 F.2d 1346, 1353 (5th Cir. 1989) (remanding for consideration of whether debtors' classification of impaired accepting class constituted bad faith); *Village Green I, GP v. Fannie Mae (In re Village Green I, GP)*, 811 F.3d 816, 820 (6th Cir. 2016) (affirming bankruptcy court's denial of confirmation and noting that the debtor's use of "an artifice to

[18] As discussed herein and in the Oaktree Claim Objection Response, Oaktree respectfully submits that in addition to the outstanding principal amount of its 1.5 Lien Notes, Oaktree also is entitled to receive payment in full on account of fees, expenses, interest at the default rate and the 1.5 Lien Applicable Premium in respect of its 1.5 Lien Notes. Oaktree reserves all rights with respect to the foregoing and refers only to outstanding principal in connection herewith for ease of comparison to the terms of the Insider Settlement Plan. *See* Oaktree Claim Objection Response. The failure of the Insider Settlement Plan to provide for the payment of the 1.5 Lien Applicable Premium and the reimbursement of Oaktree's fees and expenses, or to provide for the establishment of reserves, therefore also renders the Insider Settlement Plan unconfirmable.

[19] This equates to [redacted]% of the New Common Stock.

circumvent the purposes of § 1129(a)(10)" constituted bad faith); *In re Quigley Corp.*, 437 B.R. 102, 127 (Bankr. S.D.N.Y. 2010) (recipient of release "bought enough votes to assure that any plan would be accepted," demonstrating bad faith under section 1123(a)(3)); *In re Village at Camp Bowie I, L.P.*, 454 B.R. 702, 709 (Bankr. N.D. Tex. 2011) ("[T]he drafters of the Code did not intend to create a system in which . . . a lender could use its overwhelming share of the claims in a case to divest other creditors . . . of their economic interests.") *aff'd by Camp Bowie II*.

54. Indeed, the confirmability of the Insider Settlement Plan, and the Insider Settlement embodied therein, depends upon: (i) a sufficiently high valuation to assert that secured creditors are being paid the value of their interests in estate property despite only receiving a slice of the New Common Stock; (ii) the acceptance of the Class 3 1.5 Lien Noteholder class—which the Insiders carry by holding over 70% of the claims therein—in order to force the nonconsenting 1.5 Lien Noteholders, including Oaktree, to be forced to accept equity (and discounted equity at that) on account of their allowed, prepetition secured claims; (iii) the acceptance of the impaired unsecured classes, in order to circumvent Bankruptcy Code section 1129(a)(10)'s prohibition on using only insider-dominated classes to confirm a plan; and (iv) a liquidation analysis that stretches on its face to satisfy the best interests of creditors test under Bankruptcy Code section 1129(a)(7), but which cannot withstand scrutiny.

55. It is with this understanding that the Debtors, the Insiders, the Committee and the Committee members crafted the Insider Settlement Plan. In connection with this artifice, the Debtors manipulated the liquidation analysis in an attempt to demonstrate that Oaktree and other non-consenting 1.5 Lien Noteholders receive more under the Insider Settlement Plan than they would receive in a liquidation. Indeed, even if this Court were to accept the Debtors' $750 million valuation, Oaktree would still receive more in a liquidation because any recoveries Oaktree

receives in the form of New Common Stock will be diluted by the equity to be granted under the Management Incentive Plan.

56. Thus, by overstating value, the Insiders have provided themselves with extra consideration to pay off unsecured creditors by reducing the amount of New Common Stock paid to the 1.5 Lien Noteholders to get the deal done with the Committee. This type of negotiation and proposed settlement does not evidence the good faith necessary to satisfy the provisions of Bankruptcy Code section 1129(a)(3). Indeed, it was done to ensure that the Insider Settlement Plan could effectively be crammed down on the Non-Insiders and, therefore, should not be countenanced by this Court.

B. The Settlement Is Designed to Circumvent Bankruptcy Code Sections 1129(a)(10) and 1129(b) and Suppress the Rights of Third-Party Creditors

57. A secured creditor can only be forced to accept equity on account of its secured claims when the class to which its claim belongs votes to accept the plan. 11 U.S.C. § 1129(b)(2)(A). If acceptance by such a class is only a result of the accepting votes of insiders, however, that class cannot qualify as the impaired accepting class required for confirmation; the plan must be accepted by at least one class, disregarding any acceptance of the plan by insiders. 11 U.S.C. § 1129(a)(10); *see also In re 266 Wash. Assocs.*, 141 B.R. 275, 287 (Bankr. E.D.N.Y. 1992) ("The policy underlying Section 1129(a)(10) is that before embarking upon the torturous path of cram down and compelling the target of cram down to shoulder the risks of error necessarily associated with a forced confirmation, there must be some other properly classified group that is also hurt and nonetheless favors the plan."). The Insider Settlement is an inappropriate attempt to dodge both of these requirements.

58. As discussed above, the Insiders, the Debtors, the Committee and the Committee members have used an inflated valuation to strip Oaktree of value to which it is entitled. Using

that value, which comes out of Oaktree's pockets, they have created a "gift" to purchase the votes of unsecured creditors at limited expense to themselves, thereby creating additional impaired accepting classes. Then, having created nominally non-insider dominated (although insider-paid) impaired accepting classes, they argue that they should be permitted to control Class 3 and force Oaktree to accept New Common Stock on account of its oversecured 1.5 Lien Notes Claims. This Court should recognize this entire structure as an improper attempt to force upon Oaktree and other parties treatment from which the Bankruptcy Code is intended to insulate them, and should deny confirmation of the Insider Settlement Plan.

1. The Insider Settlement Plan Is Designed to Circumvent Bankruptcy Code Section 1129(a)(10)

59. A plan that impairs classes of claims cannot be confirmed unless "at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by an insider." 11 U.S.C. § 1129(a)(10) (emphasis added). The purpose of Bankruptcy Code section 1129(a)(10) is "to prevent a debtor from using an insider-dominated class to satisfy the requirement that at least one impaired class of creditors vote in favor of the plan." *In re Applegate Prop., Ltd.*, 133 B.R. 827, 833 (Bankr. W.D. Tex. 1991)

60. The means by which a debtor acquires its impaired accepting class, however, are subject to review for good faith under Bankruptcy Code section 1129(a)(3). *Camp Bowie II*, 710 F.3d at 248 ("[W]e do not suggest that a debtor's methods for achieving literal compliance with § 1129(a)(10) enjoy a free pass from scrutiny under § 1129(a)(3)."); *see also In re Sandy Ridge Dev. Corp.*, 881 F.2d 1346, 1353 (5th Cir. 1989) (remanding for consideration of whether debtors' classification of impaired accepting class constituted bad faith); *Village Green I, GP v. Fannie Mae (In re Village Green I, GP)*, 811 F.3d 816, 820 (6th Cir. 2016) (affirming bankruptcy court's denial of confirmation and noting that the debtor's use of "an artifice to circumvent the purposes of

§ 1129(a)(10)" constituted bad faith); *In re Quigley Corp.*, 437 B.R. 102, 127 (Bankr. S.D.N.Y. 2010) (recipient of release "bought enough votes to assure that any plan would be accepted," demonstrating bad faith under section 1123(a)(3)); *In re Village at Camp Bowie I, L.P.*, 454 B.R. 702, 709 (Bankr. N.D. Tex. 2011) ("[T]he drafters of the Code did not intend to create a system in which . . . a lender could use its overwhelming share of the claims in a case to divest other creditors . . . of their economic interests."), *aff'd by Camp Bowie II*. Because the Insiders completely dominate the voting in Classes 3 and 4 and the Debtors anticipate that they will lose the votes of 1.5 and 1.75 Lien Claims once the Insiders' votes are disregarded, the Insider Settlement Plan would not be confirmable under Bankruptcy Code section 1129(a)(10) without another impaired accepting class. Thus, the Debtors have engineered the Insider Settlement as an attempt to create three artificial impaired accepting classes to enable the Insiders' votes to be counted in Classes 3 and 4.

61. Under the Insider Settlement, the Insiders will accept consideration on account of their 1.5 Lien Notes Claims and then immediately turn around and give a portion of that consideration to the members of classes 5, 6 and 7 in order to engineer accepting classes under the Insider Settlement Plan necessary to force the Non-Insider 1.5 Lien Noteholders into equity on account of their claims at an inflated valuation. This settlement structure has the effect of disenfranchising the votes of the Non-Insiders and enabling the Debtors to avoid the cramdown provisions of the Bankruptcy Code as well as the absolute priority rule, which is plainly impermissible under long-standing Fifth Circuit precedent. *United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 298 (5th Cir. 1984) ("[A] bankruptcy court abuses its discretion in approving a settlement with a junior creditor unless the court concludes that priority of payment will be respected as to objecting senior creditors.").

62. Moreover, courts have recognized that "gifts" from senior classes to junior classes are permissible, if at all, precisely because they are not distributions "under the plan" for purposes of Bankruptcy Code section 1129(b)(2)(B)(ii)[20]. *See, e.g.*, *In re MCorp. Fin., Inc.*, 160 B.R. 941, 960 (Bankr. S.D. Tex. 1993) (holding that a gift from senior bondholders to classes below objecting subordinated bondholders was permissible under Bankruptcy Code section 1129(b)(2)(B) because "[t]he plan gives nothing to the classes below the subordinated bondholders"); *In re Journal Register Co.*, 407 B.R. 520, 533 (Bankr. S.D.N.Y. 2009) (in addressing disparate treatment, noting that "the question under § 1123(a)(4) is whether the payment that creates the difference is provided 'under the Plan,'" and holding that "the fact that certain provisions of the plan facilitate[d] [a] 'gift' and provide[d] that it [wa]s one of the 'means of execution of the Plan'" did not render that "gift" a distribution "under the plan"). However, a class that does not receive or retain property "under the plan" is deemed rejecting under Bankruptcy Code section 1126(g), regardless of any ballots the Debtors may solicit from the members of such class. Accordingly, Classes 5, 6 and 7, each of which is to receive solely a share of the Settlement Contribution,[21] should be deemed rejecting classes for purposes of confirmation, and Bankruptcy Code section 1129(a)(10) is not satisfied.

63. Moreover, the Debtors *cannot* prove that they have negotiated and proposed the Insider Settlement Plan in good faith as required by the Bankruptcy Code because they and the other plan proponents have asserted a broad mediation privilege over the substance of any negotiations related to the Insider Settlement and the Insider Settlement Plan. Through document discovery and depositions, Oaktree has attempted to understand the nature of those negotiations,

[20] Bankruptcy Code section 1129(b)(2)(B)(ii) provides, with exceptions not relevant here, that a plan is not fair and equitable as to a class of unsecured claims if any holder of a claim or interest junior to the claims of that class will "receive or retain under the plan on account of such junior claim or interest any property." (emphasis added).

[21] While the Unsecured Claims Recovery also includes "the Unsecured Claims Distribution Trust Beneficial Interests (if applicable)" and "Challenge Action Recovery (if any)," these consist solely of causes of action in which any recovery would accrue to the benefit of unsecured creditors without intervention by the Debtors.

the reasons why Oaktree was left out of plan negotiations and the motivation behind the design of the Insider Settlement Plan, which takes undue advantage of non-insider creditors. The Debtors, however, have refused to permit any inquiry into such issues, asserting both a mediation privilege under the Local Rules and a common interest privilege with the parties to the Insider Settlement. In accordance with legal precedent and this Court's instructions at a prior hearing, the Debtors must be precluded from introducing any evidence or testimony to show that the Insider Settlement Plan and Insider Settlement were negotiated and proposed in good faith. *See, e.g.*, Nov. 30, 2018 Hr'g Tr. 17:16–21:3, 39:22–41:12; *Willy v. Admin. Review Bd.*, 423 F.3d 483, 497 (5th Cir. 2005 ("[A] party may not use a privileged information both offensively and defensively at the same time. In other words, when a party entitled to claim the attorney-client privilege uses confidential information against his adversary (sword), he implicitly waives its use protectively (the shield) under that privilege."). The Debtors' and plan proponents' consistent use of this purported privilege throughout the depositions relating to plan confirmation therefore forbid the introduction of evidence on how they negotiated in good faith. *See, e.g.*, May 28, 2019 Tyler Farquharson Dep. Tr. 96:5–22 (counsel for the Debtors objecting on basis of mediation privilege as to the substance of how the Insider Settlement was negotiated); May 28, 2019 Peter Furlan Dep. Tr. 46:2–47:10 (counsel for Fairfax and the Debtors asserting privilege as to the substance of any plan or settlement negotiations); June 3, 2019 David Dunn Dep. Tr. 89:15–90:3 (counsel for the Debtors and the Committee objecting on the basis of mediation privilege as to the substance of settlement negotiations).

2. The Insider Settlement Plan Is Designed to Circumvent Bankruptcy Code Section 1129(b)

64. As noted above, the Insider Settlement also is designed to evade scrutiny of the consideration paid to non-settling members of Class 3 under Bankruptcy Code section

1129(b)(2)(A). The Debtors have rigged the class to accept the Insider Settlement Plan based on the votes of the Insiders. Accordingly, the Debtors argue that the distributions to Class 3 under the Insider Settlement Plan are not subject to the cramdown requirements of Bankruptcy Code section 1129(b)—standards which, as discussed below, the Insider Settlement Plan cannot meet. By this artifice, the Debtors seek to drown out legitimate complaints about the value of the New Common Stock by giving a megaphone to entities (*i.e.*, the Insiders) who are having others subsidize their "settlement" and release while at the same time limiting the impact the "settlement consideration" has on their recovery based on their 1.75 Lien Term Loan Claims, resulting in such parties having little to no reason to care that their 1.5 Lien Notes Claims are entitled to better treatment.

65. To remedy this injustice, and as further discussed in the Designation Motion, the votes of the Insiders in support of the Plan should be designated pursuant to Bankruptcy Code section 1126(e) because they were both cast and procured in bad faith.

66. "Votes must be designated when the court determines that the creditor has cast his vote with an 'ulterior purpose' aimed at gaining some advantage to which he would not otherwise be entitled in his position." *In re Allegheny Int'l, Inc.*, 118 B.R. 282, 290 (Bankr. W.D. Pa. 1990). Specifically, a vote of an entity whose interest in the success or failure of a plan lies outside its treatment as a creditor or interest holder in the specific class should be designated pursuant to section 1126(e). *See In re GSC, Inc.*, 453 B.R. 132, 160 (Bankr. S.D.N.Y. 2011) (comparing the extrinsic motives that justify designation with "simply a selfish or aggressive attempt to maximize recovery"); *see also Dish Network Corp. v. DBSD N. Am., Inc. (In re DBSD N. Am., Inc.)*, 634 F.3d 79, 104 (2d Cir. 2010) (designation was appropriate where vote was cast with "ulterior motives" because competitor purchased claims "not to maximize its return on the debt but to enter a strategic transaction with" the debtor); *cf. In re Mangia Pizza Invs., LP*, 480 B.R. 669, 684 (Bankr. W.D.

Tex. 2012) (designation would have been appropriate had objecting party made "some showing . . . that [a creditor was], in fact, acting in pursuit of some ulterior motive unrelated to his status as a creditor[, but] [n]one was proven at trial").

67. Again, Oaktree has attempted to obtain information regarding the negotiation history of the Insider Settlement Plan and the motivation for the Insiders' votes. Permitting the Debtors to use information they have withheld on claims of privilege as a sword to force confirmation of a plan on nonconsenting creditors like Oaktree would be manifestly inequitable. *See Willy v. Admin. Review Bd.*, 423 F.3d at 497.

68. The votes of the Insiders were not cast in good faith because they were motivated by their (x) desire to (i) receive the releases, reimbursement of fees and expenses and indemnification under the Insider Settlement Plan, and (ii) obtain the subsidy provided by Oaktree and other 1.5 Lien Noteholders through the inflated valuation underpinning the Insider Settlement Plan and (y) recoup a material portion of the "value" they gave away as 1.5 Lien Noteholders based on their sizable position in the 1.75 Lien Term Loan, rather than by the treatment afforded to the balance of Class 3 creditors. Thus, Class 3 should be treated for purposes of the Confirmation Hearing as a rejecting class entitled to the protections of Bankruptcy Code section 1129(b)(1), including that the Plan be "fair and equitable" as to Class 3.

3. The Plan Consideration to Be Received by Members of Class 3, Including Oaktree, Does Not Satisfy Bankruptcy Code Section 1129(b)(2)(A)

69. Once the votes of the Insiders are designated, the Insider Settlement Plan must satisfy the provisions of Bankruptcy Code section 1129(b)(2)(A) with respect to Class 3. Under Bankruptcy Code section 1129(b)(2)(A), the requirement that a plan be fair and equitable with respect to a class of secured claims includes the requirement that such plan provide either:

> (i) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to

> the extent of the allowed amount of such claims; and (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property; . . . or
>
> (iii) for the realization by such holders of the indubitable equivalent of such claims.

11 U.S.C. § 1129(b)(2)(A)

70. A distribution payable solely in equity at an uncertain future date clearly does not meet these requirements. In fact, Congress specifically considered that "equity securities of the [reorganized] debtor would not be the indubitable equivalent" of a secured claim. H.R. Rep. 95-595, at 549 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6544; *see also River East Plaza, LLC v. Geneva Leasing Assocs. (In re River East Plaza, LLC)*, 699 F.3d 826, 832–33 (7th Cir. 2012) (finding that a plan that would "cash out [the secured creditor]'s lien in a period of economic depression and reap the future appreciation in . . . value when the economy rebounds" did not provide the indubitable equivalent of the lender's secured claim"); *In re San Felipe @ Voss, Ltd.*, 115 B.R. 526, 529 (S.D. Tex. 1990) (reaffirming that the Bankruptcy Code prohibits "the use in cramdown of newly issued equity securities of the reorganized debtor").

71. The Insider Settlement Plan is clearly not fair and equitable as to Oaktree under section 1129(b)(2)(A). Thus, the only question left is whether the Debtors may sidestep the requirement that the plan be fair and equitable by flooding Oaktree's class with the votes of insiders receiving additional consideration and using votes purchased at Oaktree's expense to create impaired accepting classes. For the reasons outlined in the Designation Motion and above, the Court clearly should answer this question with a resounding no.

C. The Insider Settlement Plan Intentionally Mischaracterizes The Insiders' Releases, Fees and Indemnification and Provides for Disparate Treatment Within Class 3

72. Bankruptcy Code section 1129(a)(1) requires a plan to "compl[y] with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(1). This includes the

requirements governing classification of claims and the permitted contents of a plan under Bankruptcy Code sections 1122 and 1123, respectively. See *Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 648–49 (2d Cir. 1988) (Congress intended the phrase "'applicable provisions' . . . to mean provisions of Chapter 11 . . . such as section 1122 and 1123."); *see also* H.R. Rep. 95-595, at 412 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6368 ("Paragraph [1129(a)](1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of plan.").

73. Bankruptcy Code sections 1122 and 1123(a)(4) go hand in hand. Section 1123(a)(4) requires that a plan "provide the same treatment for each claim or interest of a particular class." 11 U.S.C. § 1123(a)(4). Similarly, Bankruptcy Code section 1122 requires that a plan classify claims or interests together "only if such claim[s] or interest[s] [are] substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a).

74. Class 3 is not a class of substantially similar claims receiving the same treatment. Although Article III.B.3(c) of the Insider Settlement Plan appears at first blush to set out uniform treatment for holders of 1.5 Lien Notes Claims, the Insiders, constituting 73.6% of Class 3, are slated to get a separate, more valuable recovery—the release of valuable causes of action against them held by the Debtors, exculpation, indemnification and payment of their fees and expenses.[22] Insider Settlement Plan Arts. IV.S; IV.V; VIII.C; VIII.E; 1.5 Lien Notes Indenture § 9.01. The Debtors assert that this broad relief, which constitutes significant additional plan consideration

[22] As discussed above, the Debtors and the Insiders have asserted a broad "mediation privilege." It is clear, however, that the Insiders did *not* perform any independent valuation of the New Common Stock, instead relying solely on the Debtors and the Debtors' professionals. *See, e.g.*, May 28, 2019 Peter Furlan Dep. Tr. 229:13–232:23 (Fairfax 30(b)(6) designee asserting that "PJT's [valuation] methodology . . . makes sense as the right approach to do things because PJT is closest to the company" and asserting a lack of familiarity with liquidation analysis methodologies) and the Debtors asserting privilege as to the substance of any plan or settlement negotiations); May 29, 2019 John Wilder Dep. Tr. 95:22–96:5 (Bluescape 30(b)(6) designee testifying that "[w]e didn't have a financial advisor [for a total enterprise valuation of the Debtors]. We never hired one. We just used work product from other parties and our own—and our own judgment.").

available only to the Insiders' claims in Class 3, has been purchased by the Insiders using the Settlement Contribution. Remarkably, Oaktree and the other non-insider 1.5 Lien Noteholders are required to subsidize the additional plan consideration of the broad Insider releases and the payment of their fees and expenses (and potential indemnification) resulting in excess of a [redacted]% reduction of the recoveries of the principal amount of their claims, yet the Insider Settlement Plan intentionally fails to provide Oaktree with corresponding treatment (*i.e.*, releases, exculpation, indemnification and payment of fees and expenses).

75. That the Debtors have chosen to characterize the Insider Settlement as a release by the Debtors (plus exculpation, payment of fees and indemnification) under Article VIII of the Insider Settlement Plan, rather than as treatment of the Insiders' claims under Article III of the Insider Settlement Plan, does not change the economic substance of the deal the Debtors have struck with their insiders or the proper lens for this Court to evaluate that deal. Where a creditor receives consideration on account of its claim, that consideration is included in the Court's analysis of such creditor's treatment, regardless where in the Insider Settlement Plan documentation the Debtors have chosen to place it. *See In re Global A&T Electronics*, No. 17-23931 (RDD), Hr'g Tr. Jan. 3, 2018 [D.I. 75], at 18:16–19 (plan provision that affected contingent creditor's recourse against the reorganized debtor was properly evaluated as plan treatment, notwithstanding its placement in plan provision describing third party release)[23]; *see also ACC Bondholder Grp. v. Adelphia Commc'ns Corp. (In re Adelphia Commc'ns Corp.)*, 361 B.R. 337, 362 (S.D.N.Y. 2007) (finding argument that releases and exculpation for supporting creditors were "an illegal payoff of extra consideration" had substantial likelihood of success on the merits for purposes of stay pending appeal) (internal quotation marks omitted), appeal dismissed as moot, 367 B.R. 84

[23] A true and accurate copy of the transcript referred to is attached hereto as **Exhibit E**.

(S.D.N.Y. 2007); *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 456 (1999) (agreement that was formally outside the plan was recharacterized on certiorari review as plan consideration).

76. Providing the foregoing additional consideration only to the Insider claimants in Class 3, even though Oaktree and other non-insider Class 3 claimants are required to subsidize the benefits, highlights the disparate treatment provided to Class 3 Insiders. While this disparate treatment between the Insiders and other Class 3 creditors is sufficient on its own to deny confirmation of the Insider Settlement Plan, the lengths to which the Debtors have gone to disguise the Insiders' extra consideration is yet another example of the absence of good faith with which the Debtors entered into this plan process.

II. The Insider Settlement Plan Does Not Satisfy the Best Interests of Creditors Test Under Bankruptcy Code Section 1129(a)(7)

77. The Liquidation Analysis makes clear that the Insider Settlement Plan does not satisfy the "best interests of creditors" test codified in section 1129(a)(7) of the Bankruptcy Code. Section 1129(a)(7) provides that a plan cannot be confirmed unless, with respect to each impaired class of claims or interests—

> (A) each holder of a claim or interest of such class—
>
> > (i) has accepted the plan; or
> >
> > (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of [the Bankruptcy Code] on such date.

11 U.S.C. § 1129(a)(7). As with the rest of Bankruptcy Code section 1129, the plan proponent bears the burden of demonstrating compliance with this requirement, which is also known as the "best interests test." *In re Landing Assocs., Ltd.*, 157 B.R. 791, 818 (Bankr. W.D. Tex. 1993); *see*

also In re Harborwalk, LP, No. 10-80043-G3-11, 2010 Bankr. LEXIS 3163, at *7 (Bankr. S.D. Tex. Sept. 10, 2010).

78. To meet this burden, the Debtors must present admissible evidence, not mere conclusory allegations. *In re Mcorp Fin., Inc.*, 137 B.R. 219, 229 (Bankr. S.D. Tex. 1992). The Debtors have failed to meet this standard in three ways. *First*, as discussed above, the Debtors' valuation of the New Common Stock is based on the desire of the Insiders to confirm a plan containing the Insider releases, rather than on the actual value of the Debtors' assets. *Second*, the New Common Stock will be diluted by the issuance of equity or devalued by the payment of cash under a to-be-announced Management Incentive Plan. *Third*, in light of the Insider Settlement Plan's vague plans for when, if ever, non-Insiders are to receive distributions, the Debtors' valuation may be hopelessly out of date by the time Oaktree sees a single share of New Common Stock. *Fourth*, Oaktree's projected 86% recovery in the Debtors' low-end liquidation scenario fails to take into account the claims Oaktree would have under Bankruptcy Code section 507(b) on account of the diminution in value of its collateral.

A. The Value of the Equity to be Distributed Under the Insider Settlement Plan is Less than Oaktree Would Receive in a Chapter 7 Liquidation

79. As discussed in greater detail above and in the Bonebrake Report, the New Common Stock, after repayment of $273 million in DIP and administrative claims, represents $[redacted] million of distributable value. Under the Insider Settlement Plan, Oaktree is slated to receive 8.1% of the New Common Stock (before dilution by the Management Incentive Plan), which is only worth $[redacted] million, or [redacted]% of the principal amount of Oaktree's claim. Yet, even if the Debtors' $750 million valuation were accurate, the distributions contemplated to be provided to Oaktree on account of its 1.5 Lien Notes Claims are less than Oaktree would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code, especially when taking into account dilution

from the Management Incentive Plan. The Debtors estimate that if they were liquidated under chapter 7 of the Bankruptcy Code, Oaktree would receive 100% recovery on its claims at the high end and midpoint of the Liquidation Analysis. At the low end of the Liquidation Analysis, the Debtors estimate that Oaktree would receive an 86% recovery on its claims, but that recovery completely ignores the claims that Oaktree would have under section 507(b) of the Bankruptcy Code on account of the diminution in value of its collateral, claims that would need to be paid in full in cash before any other class receives a recovery and which would bring Oaktree's recovery back up to 100%. *See* Disclosure Statement Ex. D - Liquidation Analysis at 5. The Insider Settlement Plan fails the best interests test on this basis alone.

B. The Equity to be Distributed on Account of Oaktree's Claim Does Not Satisfy Bankruptcy Code Section 1129(a)(7)

80. Even assuming the Debtors' valuation is correct, the Insider Settlement Plan fails the best interests test because the equity being distributed to Oaktree will be diluted by the Management Incentive Plan and because the Insider Settlement Plan delays distributions of equity to Oaktree, which necessarily lowers the value of such equity.

1. The Distribution to Oaktree Is Subject to Dilution by the Management Incentive Plan

81. The New Common Equity in the 1.5 Lien Claims Recovery, which is to provide the sole source of payment for Oaktree's secured claim, is "subject to dilution by the Management Incentive Plan." Insider Settlement Plan Art. I.A.8. Accordingly, to test whether the equity Oaktree will receive under the Insider Settlement Plan is greater than the value Oaktree would receive in a liquidation, it is necessary to account for this dilution.

82. The Insider Settlement Plan, however, fails to provide any information regarding the cost of the Management Incentive Plan and the resulting dilution to Oaktree's recovery. The Insider Settlement Plan defines the "Management Incentive Plan" as "a post-Effective Date

management incentive plan that may be adopted by the board of directors of the Reorganized Debtors." Insider Settlement Plan Art. I.A.121. Notwithstanding their burden to prove that the New Common Stock they intend to use as plan currency is of greater value than Oaktree would receive in a liquidation, the Debtors have provided nothing other than the bare assertion that, pursuant to the Management Incentive Plan, "management and key employees will receive a percentage of equity [under terms which] shall be determined by the Reorganized EXCO Board." Insider Settlement Plan Art. IV.O. The dilution of the New Common Stock by the Management Incentive Plan will reduce Oaktree's recovery even further below the low end of the Liquidation Analysis when accounting for the [redacted]% recovery that will already result from the Debtors' inflated equity value.

83. Oaktree, among all of the Debtors' stakeholders, is particularly vulnerable to dilution by the Management Incentive Plan. Unlike the Insiders, who will have meaningful control over the Reorganized EXCO Board,[24] Oaktree may not even have *possession* of its plan distribution when the Management Incentive Plan is implemented, being subject to the withholding provisions discussed below.

2. The Debtors' Valuation as of the Confirmation Hearing Is Not an Accurate Measure of Oaktree's Delayed Distribution

84. Moreover, the Insider Settlement Plan does not contemplate distribution of New Common Stock to Oaktree on the Effective Date. Instead, Oaktree's claim is deemed disputed in its entirety, notwithstanding the Debtors' decision to file an objection only to certain specified elements of that claim. Insider Settlement Plan Art. I.A.76. Thus, under the "Special Rules for Distributions to Holders of Disputed Claims and Interests," the Debtors will not distribute any

[24] *See* Plan Art. IV.M ("The initial board of directors of the Reorganized Debtors shall consist of five (5) persons, three (3) of whom shall be chosen by Fairfax and Bluescape . . . .")

New Common Stock to Oaktree until "all disputes in connection with [Oaktree's claims] have been resolved by settlement or Final Order." Insider Settlement Plan Art. VI.D.

85. Even assuming that the Debtors' valuation of the New Common Stock is accurate as of the Effective Date, the question before the Court is whether "the *present value* [as of the Effective Date] of the distribution [Oaktree will receive] under the plan, which must account for the time value of money," exceeds the value Oaktree would receive in a chapter 7 liquidation. *In re Sw. Boston Hotel Venture, LLC*, 460 B.R. 38, 66 (Bankr. D. Mass. 2011) (emphasis added) *vacated on other grounds sub nom. Prudential Ins. Co. of Am. v. Sw. Boston Hotel Venture, LLC (In re Sw. Boston Hotel Venture, LLC)*, 2012 Bankr. LEXIS 4662 (B.A.P. 1st Cir. Oct. 1, 2012). The answer is a resounding "NO!" The value of the New Common Stock as of the Effective Date does not represent the present value of Oaktree's right to receive New Common Stock at some point in the future, and the Debtors cannot rely on that valuation to satisfy their burden under Bankruptcy Code section 1129(a)(7). *See also Ad Hoc Grp. of Vitro Noteholders v. Vitro SAB De CV (In re Vitro SAB De CV)*, 701 F.3d 1031, 1063 n.36 (5th Cir. 2012) (noting the "questionable value of equity in a defaulting company" in affirming the partial denial of recognition under Chapter 15 to a foreign plan of reorganization that distributed contingent convertible notes to creditors). Thus, the Insider Settlement Plan violates the "best interests test" under Bankruptcy Code section 1129(a)(7) and cannot be confirmed.

C. In a Liquidation, Oaktree Would Be Entitled to Superpriority Claims for Any Diminution in Value

86. Under Paragraph 15(a) of the Final DIP Order,[25] Oaktree is entitled to a superpriority claim (the "**507(b) Claim**") under Bankruptcy Code section 507(b), secured by a

[25] The "Final DIP Order" is the *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Granting Liens and Providing Superpriority*

superpriority lien and subject only to the DIP Claims and the Carve-Out (as defined in the Final DIP Order), to the extent of any diminution in the value of its collateral. A claim under section 507(b) has priority "above all others within § 507(a)(2)," including professional fees and general claims for administrative expenses. *In re DeSardi*, 340 B.R. 790, 801-03 (Bankr. S.D. Tex. 2006); *see also In re Quality Beverage Co.*, 181 B.R. 887, 895 (Bankr. S.D. Tex. 1995) ("Except as provided in Section 507(b), claims for administrative expenses enjoy the first priority in distributions from the estate.") (emphasis added).

87. The Debtors' liquidation analysis erroneously assumes without justification that, contrary to the rights granted to Oaktree and other 1.5 Lien Noteholders under the Final DIP Order, *all* administrative expenses would receive distributions ahead of Oaktree, notwithstanding the "unambiguous" language of the Bankruptcy Code providing that a 507(b) claim has priority over administrative expenses, including post-conversion administrative expenses. *In re Nat'l Litho, LLC*, 2013 Bankr. LEXIS 2112, at *12 (Bankr. S.D. Fla. May 23, 2013). The low-end scenario in the liquidation analysis subtracts from the distributable value: (a) $17.8 million in chapter 7 trustee commission; (b) $14.5 million in chapter 7 professional fees;[26] (c) $72.4 million in "Post Conversion Cash Flow" (*i.e.*, ordinary course administrative expenses); and (d) $5.7 million in wind-down costs—a total of $110.4 million in claims with a *lower* priority than Oaktree's 507(b) Claim, and more than enough to make up the $68.4 million shortfall for Class 3 in the Debtors' low-end scenario.[27] When these claims are correctly prioritized in a hypothetical liquidation as

Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief [ECF No. 348]

[26] The Carve-Out includes "all reasonable fees and expenses up to $50,000.00 incurred by a trustee," Final DIP Order ¶ 10, meaning that $50,000 of the Trustee's commission and professional fees are entitled to priority over the 507(b) Claim. This $50,000, however, does not alter the amounts listed at the level of rounding discussed herein.

[27] It is also likely (although impossible to determine from the liquidation analysis itself) that a portion of the $62.2 million in "Purchase Price Adjustments" deducted from the distributable value as liquidation adjustments are in fact also administrative claims junior in priority to the 507(b) Claim. The "Purchase Price Adjustments" "include[]

administrative expenses that rank below the 507(b) Claim (rather than "liquidation adjustments"), it becomes clear that Oaktree would receive payment in full in cash even in the Debtors' low-end recovery scenario. Similarly, Oaktree would be entitled to receive payment in full, in cash on the 507(b) Claim ahead of any distributions being made to holders of the 1.75 Lien Term Loan Claims or unsecured creditors. For the foregoing reasons, the Insider Settlement Plan does not satisfy the best interests of creditors test.

III. The Insider Settlement Plan Strips Oaktree of its Entitlement to Payment of the Applicable Premium and Fees and Expenses

88. As discussed above and in the Oaktree Claim Objection Response, filed contemporaneously herewith, Oaktree is entitled to payment of the Applicable Premium under the 1.5 Lien Notes Indenture and fees and expenses incurred in connection with these chapter 11 cases. As an oversecured creditor, Oaktree's right to payment of fees and expenses includes payment of interest at the default rate. *See Southland Corp. v. Toronto-Dominion (In re Southland Corp.)*, 160 F.3d 1054, 1059–60 (5th Cir. 1998) (finding that where a contract includes a default rate of interest, it "is generally allowed, unless the higher rate would produce an inequitable result."); *see also In re Laymon*, 958 F.2d 72, 75 (5th Cir. 1992) (discussing pre-Code case law requiring disallowance of default-rate interest only where it would "produce an inequitable or unconscionable result"). The Debtors' failure to provide distributions on account of these obligations under the Insider Settlement Plan and arbitrary disallowance of a portion of Oaktree's claim serves as yet another independent reason why the Insider Settlement Plan cannot be confirmed. Indeed, in the absence of the creation of a reserve for distributions on account of the 1.5 Lien Applicable Premium and payment of Oaktree's fees and expenses, the Insider Settlement Plan also is not feasible as required

assumed liabilities related to Oil & Gas Assets which would serve as a reduction to sale proceeds as a purchaser of the Oil & Gas Assets and related to payable balances for gathering, lease operating expense, and capital expenditures." Disclosure Statement Ex. D - Liquidation Analysis at 11.

by Bankruptcy Code section 1129(a)(11). Finally, the Debtors' decision to disregard their obligations to Oaktree also infects the Liquidation Analysis, which assumes that the 1.5 Lien Applicable Premium is not allowed and that Oaktree is not paid its fees and expenses. Disclosure Statement Ex. D – Liquidation Analysis, at 3 n.2. This baseless assumption further impairs the plausibility of the Liquidation Analysis, thereby highlighting the Debtors' failure to carry their burden under Bankruptcy Code section 1129(a)(7).

IV. The Insider Settlement Plan Fails to Comply with the Intercreditor Agreement and Bankruptcy Code Section 510

89. Contrary to the Debtors' representation that "the allowance, classification and treatment of all Allowed Claims and Allowed Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal and equitable or contractual subordination rights relating thereto,"[28] the Insider Settlement Plan fails to give effect to Oaktree's rights under the Intercreditor Agreement and permits the 1.75 Lien Term Lenders to receive value they are prohibited from accepting under that agreement.

90. The 1.5 Lien Notes Indenture and the 1.75 Lien Credit Agreement each bind all holders thereunder to the Intercreditor Agreement.[29] Each of these provisions states that each holder of Obligations (*i.e.*, 1.5 Lien Notes or 1.75 Lien Term Loan Claims) consents to lien subordination under the Intercreditor Agreement, agrees to be bound by the Intercreditor Agreement and to refrain from taking actions contrary to the Intercreditor Agreement, and authorizes and instructs Wilmington Trust as Collateral Trustee to enter into the Intercreditor Agreement.

[28] Insider Settlement Plan Art. III.J.

[29] 1.5 Lien Notes Indenture § 12.18; 1.75 Lien Credit Agreement § 10.17.

91. As a subordination agreement, the Intercreditor Agreement is "enforceable in a [bankruptcy] case to the same extent that [it] is enforceable under applicable nonbankruptcy law. 11 U.S.C. § 510(a); *see, e.g.*, *In re La Paloma Generating Co.*, 595 B.R. 466, 477 (Bankr. D. Del. 2018) (subordination agreement required second lien plan proceeds to be turned over to first lien lenders). Thus, to the extent a subordination provision prohibits subordinated parties from accepting value outside of bankruptcy, those parties are not permitted to receive such value from an estate. *See In re Hinderliter Indus.*, 228 B.R. 848, 853 (Bankr. E.D. Tex. 1999) (under Bankruptcy Code section 510(a), "junior creditors should be prevented from receiving funds where they have explicitly agreed not to accept them") (internal quotation marks removed) (citing *In re Credit Indus. Corp.*, 366 F.2d 402, 410 (2d Cir. 1966)).

92. In addition, the Intercreditor Agreement requires any 1.75 Lien Term Lenders who, among other things, "receive any distribution of cash, property, or debt or equity securities in full or partial satisfaction or waiver of any of its claims against any Grantor in any Insolvency or Liquidation Proceeding" following the Discharge of certain [now-Discharged] priority obligations to hold such distributions solely in trust for the 1.5 Lien Noteholders and Indenture Trustee and to promptly turn over such distributions to the Indenture Trustee. Intercreditor Agreement 3.05(b)(ii). The "Discharge" required for 1.75 Lien Term Lenders to receive proceeds under the Intercreditor Agreement does not require the satisfaction merely of whatever claims may be allowed in a bankruptcy case, but all rights under the 1.5 Lien Notes.[30] In other words, the 1.75 Lien Term

[30] "Discharge" under the Intercreditor Agreement, as it applies to the 1.5 Lien Notes, is a defined term that does not encompass discharge in bankruptcy. With exceptions not relevant here, the 1.5 Lien Notes obligations are Discharged only upon the occurrence of both of the following:

(a) payment in full in cash of principal, interest (regardless of whether such interest has accrued before or after a bankruptcy case and whether or not allowed or allowable in such a bankruptcy case) and premium (if any) (again whether or not allowed or allowable in a bankruptcy case); and

(b) payment in full in cash of all other 1.5 Lien Notes obligations that were outstanding at the time (a) occurred.

Lenders are forbidden by the Intercreditor Agreement to receive value on account of the 1.75 Lien Term Loan until all obligations of the 1.5 Lien Noteholders have been paid in full in cash, *regardless whether those obligations constitute claims allowable under the Bankruptcy Code*.

93. The Insider Settlement Plan violates this requirement by proposing distributions to the 1.75 Lien Term Lenders after payment of only [redacted]% of the principal amount of Oaktree's claim, not in cash but in overvalued New Common Stock and without any payment on account of the 1.5 Lien Applicable Premium or Oaktree's fees and expenses. Accordingly, the Debtors cannot satisfy the requirement of Bankruptcy Code section 510(a) and Insider Settlement Plan Article III.J that the Insider Settlement Plan conform to priorities established by the Intercreditor Agreement.

94. Moreover, the Debtors' failure to respect the priorities set forth in the Intercreditor Agreement is yet another way in which the Debtors have failed to meet their burden under the "best interests" test. In a liquidation, the 1.75 Lien Term Lenders also would be prohibited under Bankruptcy Code section 510(a) from receiving any value until all of Oaktree's rights under the 1.5 Lien Notes are satisfied. The Debtors' middle and high-end liquidation scenarios assume erroneously that Oaktree would receive value only on account of the principal amount of its claim. On the contrary, in a hypothetical liquidation, Oaktree's rights under the Intercreditor Agreement and section 510(a) would be preserved, thereby ensuring that Oaktree would receive payment in full of the 1.5 Lien Notes (including the 1.5 Lien Applicable Premium and fees and expenses, not merely payment of principal) before the 1.75 Lien Term Lenders would be entitled to any recovery from collateral. The same holds true with respect to Oaktree's 507(b) Claim in a liquidation. By failing to account for Oaktree's rights under the Intercreditor Agreement, the Debtors have failed to carry their burden under Bankruptcy Code section 1129(a)(7).

Intercreditor Agreement at 6–7 (definition of "Discharge of Second Lien Obligations").

V. The Insider Settlement Plan Cannot Be Confirmed Because it Provides for Payment of Individual Committee Members' Fees

95. The Insider Settlement Plan contemplates payment, without further review by this Court, of "any reasonable and documented unpaid fees and expenses incurred on or before the Effective Date by all of the attorneys, accountants, and other professionals, advisors, and consultants . . . of Cross Sound, the Unsecured Notes Trustee, and Reme, LLC, each of whom is a member of the Committee." Insider Settlement Plan Art. IV.S. This is impermissible under the great weight of case law, which holds that the Bankruptcy Code only permits payment of expenses incurred directly by Committee members, not the fees of professionals they may elect to hire. *See Davis v. Elliot Mgmt. Corp. (In re Lehman Bros. Holdings Inc.)*, 508 B.R. 283, 294 (S.D.N.Y. 2014) (plan could not provide for payment of committee members' professional fees because individual members of an official committee may only obtain payment of their professional fees under the "substantial contribution" standards of 11 U.S.C. § 503(b)(3)(D) and (b)(4)); *In re Michigan Gen. Corp.*, 102 B.R. 554, 558 (Bankr. N.D. Tex. 1988) ("The Court is generally of the opinion that members of a Creditors' Committee may recover their expenses incurred as members of the committee. This will generally include airfare, hotel accommodations, and minor out-of-pocket expenses. However, the Court holds that services of an attorney for a *member* of a creditors' committee are not compensable because they are solely for the benefit of the creditor and are of no benefit to the estate, or to the committee.") (emphasis in original); *In re FirstPlus Fin., Inc.*, 254 B.R. 888, 892 (Bankr. N.D. Tex. 2000) ("This Court does not believe that Congress intended . . . § 503(b) to include the expenses and fees of counsel that may be hired by each individual member of the Committee in addition to the expenses and fees awarded to the committee's counsel."); *see also In re Aegean Marine Petrol Network Inc.*, No. 18-13374, Hr'g Tr. Mar. 26, 2019, at 111:11–14 (Bankr. S.D.N.Y. 2019) ("[THE COURT:] [W]hether this is governed by

Section 503 or somehow it is separate and governed by Section 1129(a)(4) without reference to Section 503 . . . , I think I need to approve it [*i.e.*, approve the specific fees sought].").[31]

96. Congress specifically rejected statutory language that would have permitted the payments the Debtors request permission to make under the Insider Settlement Plan. When the current language of Bankruptcy Code section 503(b) was adopted in 1994, Congress adopted subparagraph 503(b)(3)(F) from the House bill instead of proposed paragraph 503(b)(7) from the Senate bill. The Senate characterized its rejected amendment as "including [allowance of] fees of an attorney or accountant for professional services rendered for the [Committee] member." S. Rep. 103-168, at 6 (1993). The House, on the other hand, noted explicitly that its version of section 503(b) (*i.e.*, the version that is currently law) "would not allow the payment of compensation for services rendered by or to committee members." H.R. Rep. 103-835, at 39 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3340, 3348. It is thus clear that Congress considered—and rejected—payment of Committee members' fees outside of the substantial contribution paradigm. *See also FirstPlus Fin., Inc.*, 254 B.R. at 893–94 (discussing the enactment of the current statutory language). Significantly, the Committee members' fees are not proposed to be paid based on their individual roles in the case, but solely as a reward for having served on the Committee. *See* June 3, 2019 David Dunn Dep. Tr. 102:13-103:6 (Committee 30(b)(6) designee asserting that the Insider Settlement Plan "provides for committee members' fees to be paid," but that he did not believe it "breaks those [fees] down by committee member"). The Committee members whose fees are to

[31] Akin Gump Strauss Hauer & Feld LLP represented the Official Committee of Unsecured Creditors in the Aegean chapter 11 cases and filed pleadings in the Aegean chapter 11 cases in support of the payment of the fees and expenses of the committee members. In Aegean, however, the fees and expenses were not to be paid by the debtors but, rather, by a third party that was sponsoring the debtors' plan. Thus, the committee members' fees and expenses would not have diluted recoveries to creditors of the Aegean debtors' estates. A true and accurate copy of the transcript referred to is attached hereto as **Exhibit F**.

be paid under the Insider Settlement Plan have not attempted to make any showing that they are entitled to those fees under the "substantial contribution" standard.

VI. The Insider Settlement Plan Must Provide for the Continued Existence of the 1.5 Lien Notes Indenture Pending Resolution of the Causes of Action that May Be Brought Against Oaktree

97. As discussed above and in the Oaktree Claim Objection Response, pursuant to the 1.5 Lien Notes Indenture and the guarantee provided in Section 9.01 thereof, Oaktree is entitled to payment of fees and expenses incurred in enforcing its rights under the guarantee. The Debtors cleverly seek to deprive Oaktree of its right to payment of such fees and expenses by providing in the Insider Settlement Plan that the 1.5 Lien Notes Indenture, among other agreements, will be "deemed canceled, surrendered, and discharged" as of the Effective Date, provided that "any . . . indenture . . . that governs the rights of the Holder of a Claim . . . shall continue in effect" for specified purposes. Such specified purposes, however, do not extend to the rights of individual holders to payment of fees and expenses incurred in enforcing rights under the guarantee. Insider Settlement Plan Art. IV.E. Thus, in order to preserve Oaktree's rights under the 1.5 Lien Note Indenture—in connection with issues which are contemplated to be litigated subsequent to the Effective Date—the Insider Settlement Plan must be modified to limit such cancellation, surrender and discharge to provisions that do not negatively impact Oaktree's rights.

RESERVATION OF RIGHTS

98. This Objection is submitted without prejudice to, and with a full reservation of, Oaktree's rights to object to confirmation of the Insider Settlement Plan on any basis, or to supplement this Objection in writing or at the hearing thereon, including, without limitation, in light of ongoing depositions and/or in the event the Debtors amend or otherwise modify the Insider Settlement Plan.

CONCLUSION

99. For the foregoing reasons, the Debtors' request for confirmation of the Insider Settlement Plan should be denied or the Insider Settlement Plan must be modified to account for the concerns addressed above.

Dated: June 4, 2019

Respectfully submitted,

/s/ Marty L. Brimmage, Jr.

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Counsel for Oaktree Capital Management, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on June 4, 2019, a true and correct copy of the foregoing document was served via email through the Bankruptcy Court's Electronic Case Filing System to all registered ECF users appearing in these cases.

/s/ Marty L. Brimmage, Jr.
Marty L. Brimmage, Jr.

EXHIBIT A

Exhibit 4.1

EXECUTION VERSION

INDENTURE

Dated as of March 15, 2017

among

EXCO RESOURCES, INC.,
as Issuer

GUARANTORS,
as Guarantors

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

and

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Collateral Trustee

8.0% / 11.0% 1.5 LIEN SENIOR SECURED PIK TOGGLE NOTES DUE 2022

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INDENTURE, dated as of March 15, 2017, among EXCO RESOURCES, INC., a Texas corporation (the "Issuer"), the GUARANTORS (as defined below) from time to time party hereto and WILMINGTON TRUST, NATIONAL ASSOCIATION, as trustee (the "Trustee") and as Collateral Trustee (as defined below).

W I T N E S S E T H

WHEREAS, the Issuer has duly authorized the creation of an issue of (i) $300,000,000 aggregate principal amount of 8.0% / 11.0% 1.5 Lien Senior Secured PIK Toggle Notes due 2022 (the "Initial Notes" and together with any PIK Notes (as defined below) issued from time to time as permitted hereby, the "Notes");

WHEREAS, the Notes shall be unconditionally and irrevocably guaranteed by the Guarantors;

WHEREAS, the Issuer and each of the Guarantors has duly authorized the execution and delivery of this Indenture; and

WHEREAS, all things necessary (i) to make the Notes, when executed and duly issued by the Issuer and authenticated and delivered hereunder, the valid obligations of the Issuer and the Guarantors, and (ii) to make this Indenture a valid agreement of the Issuer and the Guarantors have been done.

NOW, THEREFORE, the Issuer, the Guarantors, the Trustee and the Collateral Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders (as defined below) of the Notes.

ARTICLE 1

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01. Definitions.

"1.75 Lien Credit Agreement" means that certain Term Loan Credit Agreement effective as of the Issue Date among the Issuer, the lenders party thereto and Wilmington Trust, National Association, as administrative agent thereunder, as the same may be amended, supplemented, modified, restated, refinanced or replaced from time to time after the Issue Date in accordance with the Intercreditor Agreement and with the same and/or different lenders and/or agents in accordance with the Intercreditor Agreement; provided that any increase in the principal amount of the Loans or Letters of Credit (each as defined in the 1.75 Lien Credit Agreement) together with any other borrowings or other extensions of credit thereunder is permitted solely under Section 4.09(b)(3)(x).

"Additional Secured Debt Designation" means the written agreement of the Priority Lien Representative of holders of any Series of Priority Lien Debt, the Junior Priority Lien Representative of holders of any Series of Junior Priority Lien Debt or the Junior Lien Representative of holders of any Series of Junior Lien Debt, as applicable, as set forth in the indenture, credit agreement or other agreement governing such Series of Priority Lien Debt, Series of Junior Priority Lien Debt or Series of Junior Lien Debt, for the benefit of (a) all holders of existing and future Senior Priority Lien Debt, the Senior Priority Lien Collateral Agent and each existing and future holder of Senior Priority Liens, (b) if applicable, all holders of each existing and future Series of Priority Lien Debt, the Collateral Trustee and each existing and future holder of Priority Liens, (c) if applicable, all holders of each existing and future Series of Junior Priority Lien Debt, the Junior Priority Lien Collateral Agent and each existing and future holder of Junior Priority Liens, and (d) if applicable, all holders of each existing and future Series of

Junior Lien Debt, the Junior Lien Collateral Agent and each existing and future holder of Junior Liens, in each case:

(1) that all Priority Lien Obligations, Junior Priority Lien Obligations or Junior Lien Obligations, as applicable, will be and are secured equally and ratably by all Priority Liens, Junior Priority Liens or Junior Liens, as applicable, at any time granted by the Issuer or any Guarantor to secure any Obligations in respect of such Series of Priority Lien Debt, Series of Junior Priority Lien Debt or Series of Junior Lien Debt, as applicable, whether or not upon Property otherwise constituting collateral for such Series of Priority Lien Debt, Series of Junior Priority Lien Debt or Series of Junior Lien Debt, as applicable, and that all such Priority Liens, Junior Priority Liens or Junior Liens, as applicable, will be enforceable by the Collateral Trustee, the Junior Priority Lien Collateral Agent or Junior Lien Collateral Agent, as applicable, for the benefit of all holders of Priority Lien Obligations, Junior Priority Lien Obligations or Junior Lien Obligations, as applicable, equally and ratably;

(2) that such Priority Lien Representative, Junior Priority Lien Representative or Junior Lien Representative, as applicable, and the holders of Obligations in respect of such Series of Priority Lien Debt, Series of Junior Priority Lien Debt or Series of Junior Lien Debt, as applicable, are bound by the provisions of the Intercreditor Agreement, including the provisions relating to the ranking of Senior Priority Liens, Priority Liens, Junior Priority Liens and Junior Liens and the order of application of proceeds from the enforcement of Senior Priority Liens, Priority Liens, Junior Priority Liens and Junior Liens; and

(3) appointing the Collateral Trustee, Junior Priority Lien Collateral Agent or Junior Lien Collateral Agent, as applicable, and consenting to the terms of the Intercreditor Agreement and the performance by the Collateral Trustee, Junior Priority Lien Collateral Agent or Junior Lien Collateral Agent, as applicable, of, and directing the Collateral Trustee, the Junior Priority Lien Collateral Agent or Junior Lien Collateral Agent, as applicable, to perform, its obligations under the Collateral Trust Agreement or applicable security documents, as applicable, and the Intercreditor Agreement, together with all such powers as are reasonably incidental thereto.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agent" means any Registrar or Paying Agent.

"Appalachian Area" has the meaning assigned to such term in the Marcellus Joint Development Agreement as in effect on the Marcellus JV Closing Date and as amended or restated thereafter.

"Applicable Premium" means, with respect to any Note on any Redemption Date, the greater of:

(1) 1.0% of the principal amount of such Note; and

(2) the excess, if any, of (a) the present value at such Redemption Date of (i) the redemption price of such Note at March 20, 2018 (such redemption price being set forth in Section 3.07 hereof), *plus* (ii) all required interest payments due on such Note through March 20, 2018 (excluding accrued but unpaid interest to the Redemption Date, and assuming the rate of interest on the Notes for the period from the Redemption Date to but excluding March 20, 2018 will be the rate for Cash Interest), computed using a discount rate equal to the Treasury Rate as of such Redemption Date plus 50 basis points; over (b) the principal amount of such Note.

"Approved Bank" means any domestic or foreign commercial bank having capital and surplus of not less than $250,000,000 in the case of U.S. banks and $100,000,000 (or the Dollar Equivalent as of the date of determination) in the case of non-U.S. banks.

"Approved Petroleum Engineer" means Lee Keeling & Associates, Netherland Sewell & Associates, Inc., Ryder Scott Petroleum Consultants or any other reputable firm of independent petroleum engineers selected by the Issuer.

"Asset Sale" means any sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions) by the Issuer or any Restricted Subsidiary, including any disposition by means of a merger, consolidation or similar transaction (each referred to for the purposes of this definition as a "disposition") of (a) any shares of Capital Stock of a Restricted Subsidiary (other than directors' qualifying shares or shares required by applicable law to be held by a Person other than the Issuer or a Restricted Subsidiary), (b) all or substantially all the assets of any division or line of business of the Issuer or any Restricted Subsidiary, and (c) any other assets of the Issuer or any Restricted Subsidiary outside of the ordinary course of business of the Issuer or such Restricted Subsidiary; provided that none of the following shall constitute an "Asset Sale" for purposes of this Indenture:

(a) a disposition by (i) a Guarantor to the Issuer or by the Issuer or a Guarantor to a Guarantor, (ii) a Non-Guarantor Restricted Subsidiary to the Issuer or a Guarantor and (iii) a Non-Guarantor Restricted Subsidiary to a Non-Guarantor Restricted Subsidiary;

(b) for purposes of Section 4.10 only, a disposition that constitutes a Restricted Payment (or would constitute a Restricted Payment but for the exclusions from the definition thereof) and that is not prohibited by Section 4.10;

(c) a disposition of Crude Oil, Natural Gas or other Hydrocarbons or other mineral products in the ordinary course of business of the oil and gas production operations of the Issuer and its Subsidiaries (but, excluding, among other things and for the avoidance of doubt, the disposition of all or substantially all the assets of the Issuer and its Restricted Subsidiaries, taken as a whole);

(d) the provision of services, equipment and other assets for the operation and development of the Issuer's and its Restricted Subsidiaries' Crude Oil and Natural Gas wells, in the ordinary course of the Issuer's and its Restricted Subsidiaries Oil and Gas Business, notwithstanding that such transactions may be recorded as asset sales in accordance with full cost accounting guidelines;

(e) the sale or other disposition of cash or Temporary Cash Investments, Hedging Obligations or other financial instruments in the ordinary course of business;

(f) the trade or exchange by the Issuer or any Restricted Subsidiary of any Oil and Gas Property of the Issuer or such Restricted Subsidiary for any Oil and Gas Properties of another Person or for the Capital Stock of a Person primarily engaged in the Oil and Gas Business, including any de minimis amount of cash or Cash Equivalents necessary in order to achieve an exchange of equivalent value (but, excluding, among other things and for the avoidance of doubt, the disposition of all or substantially all the assets of the Issuer and its Restricted Subsidiaries, taken as a whole); provided, however, that the value of the Oil and Gas Properties therein received by the Issuer or any Restricted Subsidiary in such trade or exchange (including any cash or Cash Equivalents) is at least equal to the fair market value (as determined in good faith by the Board of Directors or an executive officer of the Issuer or such Restricted Subsidiary with the

responsibility for such transaction (if the Board of Directors has delegated such determination to such executive officer, which delegation may occur for Oil and Gas Properties for which the fair market value is less than $25,000,000), which determination shall be conclusive evidence of compliance with this provision) of the Oil and Gas Properties or Capital Stock of a Person primarily engaged in the Oil and Gas Business (including any cash or Cash Equivalents) so traded or exchanged; provided, further, that any Net Cash Proceeds are applied pursuant to the requirements of Section 4.10;

(g) the creation or perfection of a Lien permitted pursuant to this Indenture;

(h) the abandonment, farm-out, lease or sublease of developed or undeveloped Oil and Gas Properties in the ordinary course of business;

(i) the sale or transfer of surplus or obsolete equipment;

(j) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;

(k) the licensing or sublicensing of intellectual property (including without limitation the licensing of seismic data) or other general intangibles and licenses, leases or subleases of other property (other than any Oil and Gas Properties or other interest in real property) in the Issuer's ordinary course of business which do not materially interfere with the business of the Issuer and its Restricted Subsidiaries;

(l) the surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind;

(m) the following transactions:

(i) the sale, transfer or assignment by the Issuer, EXCO PA, EXCO WV or any other Restricted Subsidiary of an undivided interest in Oil and Gas Properties acquired by the Issuer, EXCO PA, EXCO WV or any other Restricted Subsidiary in the Appalachian Area to the extent required pursuant to and in accordance with the right of first refusal provisions of the Marcellus JV Documents; and

(ii) the sale, transfer or assignment by the Issuer, EOC or any other Restricted Subsidiary of an undivided interest in Oil and Gas Properties acquired by the Issuer, EOC or any other Restricted Subsidiary in the East Texas/North Louisiana Area to the extent required pursuant to and in accordance with the right of first refusal provisions of the BG Joint Development Agreement; and

(n) a disposition of assets in a single transaction or a series of related transactions with a fair market value of less than $5,000,000.

"Attributable Debt" in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value (discounted at the interest rate borne by the Notes, compounded annually) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended); provided, that if such Sale/Leaseback Transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of "Capital Lease Obligation."

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereinafter in effect, or any successor statute.

"Bankruptcy Event" means, with respect to any Person, such Person becomes the subject of a bankruptcy, reorganization or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Trustee, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that, for the avoidance of doubt, a Bankruptcy Event shall not result solely by virtue of (i) any ownership interest, or the acquisition of any ownership interest, in such Person or any parent thereof by a Governmental Authority or instrumentality thereof or (ii) in the case of a solvent Person, the precautionary appointment of an administrator, guardian, custodian or other similar official by a Governmental Authority under or based on the law of the country where such Person is subject to home jurisdiction supervision if applicable law requires that such appointment not be publicly disclosed where such action does not result in or provide such Person with immunity from the jurisdiction of courts within the United States of America or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality), to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"Bankruptcy Law" means the Bankruptcy Code and any other federal, state or foreign bankruptcy, insolvency, receivership or similar law.

"BG Development Costs" means the costs and expenses incurred in the conduct of development operations in the East Texas/North Louisiana Area pursuant to the BG JV Documents.

"BG Joint Development Agreement" means that certain Joint Development Agreement, dated as of August 14, 2009 (as the same may be amended, supplemented, modified or restated), by and among BG US Production Company, LLC, a Delaware limited liability company, and EOC, pursuant to which the parties thereto entered into a joint development agreement to develop and operate certain oil and gas properties located in the East Texas/North Louisiana Area.

"BG JV Documents" means the BG Joint Development Agreement and any other documents, instruments, agreements or certificates contemplated by or executed in connection therewith.

"Bluescape Agreement" means that certain Services and Investment Agreement, dated as of March 31, 2015, between the Issuer and Energy Strategic Advisory Services LLC, a Delaware limited liability company, as the same may be amended, supplemented, modified, restated, refinanced or replaced from time to time.

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Board of Directors" means: (a) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board; (b) with respect to a partnership, the board of directors of the general partner of the partnership; (c) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and (d) with respect to any other Person, the board or committee of such Person serving a similar function.

"Business Day" means each day which is not a Saturday, a Sunday or a day on which commercial banks in New York, New York, in the city in which the Corporate Trust Office of the Trustee is located or at a place of payment are authorized or required by law, regulation or executive order to remain closed.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) 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. For purposes of Section 4.12, a Capital Lease Obligation will be deemed to be secured by a Lien on the property being leased.

"Capital Stock" means: (a) in the case of a corporation, corporate stock or shares in the capital of such corporation; (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person; provided that any instrument evidencing Indebtedness convertible or exchangeable into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock, shall not be deemed to be Capital Stock unless and until such instrument is so converted or exchanged.

"Cash Equivalents" means any of the following:

(a) Dollars;

(b) securities issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof, the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of two years or less from the date of acquisition;

(c) certificates of deposit, time deposits and eurodollar time deposits with maturities of three years or less from the date of acquisition, demand deposits, bankers' acceptances with maturities not exceeding three years and overnight bank deposits, in each case with an Approved Bank;

(d) repurchase obligations for underlying securities of the types described in clauses (b) and (c) above or clauses (f) and (g) below entered into with any Approved Bank or recognized securities dealer meeting the qualifications specified in clause (c) above;

(e) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation (other than structured investment vehicles and other than corporations used in structured financing transactions) rated at least P-2 (or the equivalent thereof) or A-2 (or the equivalent thereof) from either Moody's or S&P (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency selected by the Issuer) and in each case maturing within 36 months after the date of acquisition thereof;

(f) marketable short-term money market and similar liquid funds having a rating of at least P-2 (or the equivalent thereof) or A-2 (or the equivalent thereof) from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency selected by the Issuer);

(g) readily marketable direct obligations issued or fully guaranteed by any state, commonwealth or territory of the U.S. or any political subdivision or taxing authority thereof; provided that each such readily marketable direct obligation shall have an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency selected by the Issuer) with maturities of two years or less from the date of acquisition;

(h) Investments with average maturities of 18 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency selected by the Issuer);

(i) investment funds investing substantially all of their assets in securities of the types described in clauses (a) through (h) above; and

(j) Indebtedness or preferred stock issued by Persons with a rating of "A" or higher from S&P and "A-2" from Moody's with maturities of two years or less from the date of acquisition.

"Cash Management Obligations" means any obligations in respect of treasury management arrangements, depositary or other cash management services, including commercial credit card and merchant card services.

"Change of Control" means the occurrence of any of the following events:

(a) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), other than any Permitted Investor, is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause (a) such person shall be deemed to have "beneficial ownership" of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Issuer (or its successors by merger, consolidation or purchase of all or substantially all of its assets);

(b) the adoption of a plan relating to the liquidation or dissolution of the Issuer;

(c) the merger or consolidation of the Issuer with or into another Person or the merger of another Person with or into the Issuer, or the sale of all or substantially all the assets of the Issuer (determined on a consolidated basis) to another Person other than, in the case of a merger or consolidation transaction, a transaction in which holders of securities that represented 100% of the Voting Stock of the Issuer immediately prior to such transaction (or other securities into which such securities are converted as part of such merger or consolidation transaction) become the beneficial owners directly or indirectly of at least a majority of the Voting Stock of the surviving Person in such merger or consolidation transaction immediately after such transaction; or

(d) the occurrence of any "Change of Control" (or similar term) as such term is defined under the First Lien RBL Credit Agreement or under any Senior Priority Lien Document, Priority Lien Document, Junior Priority Lien Document or Junior Lien Document.

"Code" means the United States Internal Revenue Code of 1986, as amended, or any successor thereto.

"Collateral" means all assets, whether now owned or hereafter acquired by the Issuer or any Guarantor, in which a Lien is granted or purported to be granted to the Trustee, the Collateral Trustee or the Holders as security for any Obligation.

"Collateral Coverage Ratio" means, as of any date, the ratio of (a) the sum of (without duplication) (i) the PV-10 of Proved Reserves and Unproved Reserves of the Mortgaged Properties and other Oil and Gas Properties as evaluated in the most recent Collateral Coverage Reserve Report, and (ii) the value for net undeveloped acres that do not have scheduled locations within the Collateral Coverage Reserve Report derived from the Issuer's land records and recent leasing activity for comparable acreage, to (b) the aggregate outstanding Secured Indebtedness of the Issuer and its Restricted Subsidiaries as of such date.

"Collateral Coverage Reserve Report" means a report setting forth, as of the end of the Issuer's most recent fiscal year, (i) the PV-10 of the Proved Reserves, as evaluated in the Reserve Report most recently delivered pursuant to Section 4.23, based upon the economic assumptions consistent with the RBL Agent's lending requirements at the time, (ii) the PV-10 of the Unproved Reserves of the Mortgaged Properties and other Oil and Gas Properties, and (iii) the value for net undeveloped acres that do not have scheduled locations within the Proved Reserves and Unproved Reserves derived from Issuer's land records and recent leasing activity for comparable acreage attributable to the Oil and Gas Properties of the Issuer and the Restricted Subsidiaries, based upon NYMEX Prices as of the report date.

"Collateral Trust Agreement" means the Collateral Trust Agreement, dated as of the Issue Date, among the Issuer, the Guarantors party thereto, the Trustee and the Collateral Trustee, as the same may be amended, supplemented, replaced (whether upon or after termination or otherwise) or otherwise modified from time to time.

"Collateral Trust Joinder Agreement" means (x) in the case of additional debt, a joinder agreement substantially in the form of Exhibit B to the Collateral Trust Agreement or (y) in the case of an additional Guarantor, a joinder agreement substantially in the form of Exhibit C to the Collateral Trust Agreement.

"Collateral Trustee" means the collateral trustee for the holders of Notes under the Indenture and the holders of other Priority Lien Debt in accordance with the Collateral Trust Agreement. Wilmington Trust, National Association will initially serve as the Collateral Trustee.

"Commodity Agreement" means any oil or natural gas hedging agreement and other agreement or arrangement entered into in the ordinary course of business and designed to protect the Issuer or any Restricted Subsidiary against fluctuations in oil or natural gas prices.

"Common Stock" means shares of common stock, par value $0.001 per share, of the Issuer.

"Consolidated Coverage Ratio" as of any date of determination means the ratio of (a) the aggregate amount of EBITDA for the period of the most recent four consecutive fiscal quarters ending prior to the date of such determination to (b) Consolidated Interest Expense for such four fiscal quarters; provided, that:

(a) if the Issuer or any Restricted Subsidiary has Incurred any Indebtedness since the beginning of such period that remains outstanding or if the transaction giving rise to the need to

calculate the Consolidated Coverage Ratio is an Incurrence of Indebtedness, or both, EBITDA and Consolidated Interest Expense for such period shall be calculated after giving effect on a pro forma basis to such Indebtedness as if such Indebtedness had been Incurred on the first day of such period;

(b) if the Issuer or any Restricted Subsidiary has repaid, repurchased, defeased or otherwise discharged any Indebtedness since the beginning of such period or if any Indebtedness is to be repaid, repurchased, defeased or otherwise discharged (in each case other than Indebtedness Incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) on the date of the transaction giving rise to the need to calculate the Consolidated Coverage Ratio, EBITDA and Consolidated Interest Expense for such period shall be calculated on a pro forma basis as if such discharge had occurred on the first day of such period and as if the Issuer or such Restricted Subsidiary has not earned the interest income actually earned during such period in respect of cash or Temporary Cash Investments used to repay, repurchase, defease or otherwise discharge such Indebtedness;

(c) if since the beginning of such period the Issuer or any Restricted Subsidiary shall have made any Asset Sale, EBITDA for such period shall be reduced by an amount equal to EBITDA (if positive) directly attributable to the assets which are the subject of such Asset Sale for such period, or increased by an amount equal to EBITDA (if negative), directly attributable thereto for such period and Consolidated Interest Expense for such period shall be reduced by an amount equal to the Consolidated Interest Expense directly attributable to any Indebtedness of the Issuer or any Restricted Subsidiary repaid, repurchased, defeased or otherwise discharged with respect to the Issuer and the continuing Restricted Subsidiaries in connection with such Asset Sale for such period (or, if the Capital Stock of any Restricted Subsidiary is sold, the Consolidated Interest Expense for such period directly attributable to the Indebtedness of such Restricted Subsidiary to the extent the Issuer and the continuing Restricted Subsidiaries are no longer liable for such Indebtedness after such sale);

(d) if since the beginning of such period the Issuer or any Restricted Subsidiary (by merger or otherwise) shall have made an Investment in any Restricted Subsidiary (or any Person which becomes a Restricted Subsidiary) or an acquisition, including any acquisition of assets occurring in connection with a transaction requiring a calculation to be made, which constitutes all or substantially all of an operating unit of a business, EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto (including the Incurrence of any Indebtedness) as if such Investment or acquisition occurred on the first day of such period;

(e) if since the beginning of such period any Person (that subsequently became a Restricted Subsidiary or was merged with or into the Issuer or any Restricted Subsidiary since the beginning of such period) shall have made any Asset Sale, any Investment or acquisition of assets that would have required an adjustment pursuant to clause (c) or (d) above if made by the Issuer or a Restricted Subsidiary during such period, EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto as if such Asset Sale, Investment or acquisition occurred on the first day of such period; and

(f) interest income reasonably anticipated by such Person to be received during the applicable four-quarter period from cash or Temporary Cash Investments held by such Person or any Restricted Subsidiary of such Person, which cash or Temporary Cash Investments exist on the date of determination or will exist as a result of the transaction giving rise to the need to calculate the Consolidated Coverage Ratio, will be included.

For purposes of this definition, whenever pro forma effect is to be given to an acquisition of assets, the amount of income or earnings relating thereto and the amount of Consolidated Interest Expense associated with any Indebtedness Incurred in connection therewith, the pro forma calculations shall be determined in good faith by a responsible financial or accounting officer of the Issuer. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Interest Rate Agreement applicable to such Indebtedness, but if the remaining term of such Interest Rate Agreement is less than twelve (12) months, then such Interest Rate Agreement shall only be taken into account for that portion of the period equal to the remaining term thereof).

If any Indebtedness is Incurred under a revolving credit facility and is being given pro forma effect, the interest on such Indebtedness shall be calculated based on the average daily balance of such Indebtedness for the four fiscal quarters subject to the pro forma calculation to the extent that such Indebtedness was Incurred solely for working capital purposes.

"Consolidated Interest Expense" means, for any period, the total interest expense of the Issuer and the consolidated Restricted Subsidiaries, *plus*, to the extent not included in such total interest expense, and to the extent Incurred by the Issuer or the Restricted Subsidiaries, without duplication,

(a) PIK interest (including PIK Interest) and interest expense attributable to Capital Lease Obligations;

(b) capitalized interest;

(c) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing;

(d) net payments pursuant to Currency Agreements and Interest Rate Agreements;

(e) dividends accrued in respect of all Preferred Stock held by Persons other than the Issuer or a Wholly-Owned Subsidiary (other than dividends payable solely in Capital Stock (other than Disqualified Stock) of the Issuer);

(f) interest incurred in connection with Investments in discontinued operations;

(g) interest actually paid by the Issuer or any such Restricted Subsidiary under any Guarantee of Indebtedness or other obligation of any Person; and

(h) the cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than the Issuer) in connection with Indebtedness Incurred by such plan or trust.

Notwithstanding the foregoing, there shall be excluded from Consolidated Interest Expense (1) Consolidated Interest Expense with respect to any Production Payments to the extent such Production Payments are excluded from the definition of "Indebtedness" and (2) noncash interest expense incurred in connection with interest rate caps and other interest rate and currency options that, at the time entered into, resulted in the Issuer and its Restricted Subsidiaries being either neutral or net payors as to future payouts under such caps or options.

"Consolidated Net Income" means, for any period, the net income of the Issuer and its consolidated Restricted Subsidiaries; provided, however, that there shall not be included in such Consolidated Net Income the following items, in each case adjusted for income taxes, using the Issuer's estimated income tax rate for the applicable period, attributable to such items excluded from Consolidated Net Income:

(a) any net income of any Person (other than the Issuer) if such Person is not a Restricted Subsidiary or that is accounted for by the equity method of accounting, except that:

(1) subject to the exclusion contained in clause (e) below, the Issuer's equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Issuer or a consolidated Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to a Restricted Subsidiary, to the limitations contained in clause (c) below); and

(2) the Issuer's cash contributions (net of cash contributions or other cash distributions from such Person) in connection with a net loss of any such Person for such period shall be included in determining such Consolidated Net Income;

(b) any net income (or loss) of any Person acquired by the Issuer or a consolidated Restricted Subsidiary in a pooling of interests transaction (or any transaction accounted for in a manner similar to a pooling of interests) for any period prior to the date of such acquisition;

(c) any net income of any consolidated Restricted Subsidiary if such consolidated Restricted Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such consolidated Restricted Subsidiary, directly or indirectly, to the Issuer, except that:

(1) subject to the exclusion contained in clause (e) below, the Issuer's equity in the net income of any such consolidated Restricted Subsidiary for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed (or, if greater, for purposes of calculation of the Consolidated Coverage Ratio only, permitted at the date of determination to be distributed) by such consolidated Restricted Subsidiary during such period to the Issuer or another consolidated Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to another consolidated Restricted Subsidiary, to the limitation contained in this clause); and

(2) the Issuer's cash contributions in connection with a net loss of any such consolidated Restricted Subsidiary for such period shall be included in determining such Consolidated Net Income;

(d) any gain (or loss) realized upon the sale or other disposition of any assets of the Issuer, its consolidated Subsidiaries or any other Person (including pursuant to any sale-and-leaseback arrangement) which are not sold or otherwise disposed of in the ordinary course of business and any gain (or loss) realized upon the sale or other disposition of any Capital Stock of any Person;

(e) any impairment losses on Oil and Gas Properties;

(f) extraordinary or non-recurring gains or losses;

(g) any unrealized non-cash gains or losses or charges in respect of Hedging Obligations (including those resulting from the application of ASC815);

(h) any non-cash compensation charge arising from any grant of stock, stock options or other equity based awards;

(i) any income from assets or businesses classified as discontinued operations;

(j) the cumulative effect of a change in accounting principles; and

(k) to the extent deducted in the calculation of Consolidated Net Income, any non-cash or non-recurring charges relating to any premium or penalty paid, write-off of deferred financing costs or other financial recapitalization charges in connection with redeeming or retiring any Indebtedness prior to its Stated Maturity will be excluded, in each case, for such period.

Notwithstanding the foregoing, for the purpose of Section 4.07 only (but not the calculation of the Consolidated Coverage Ratio for purposes of determining compliance with such covenant), there shall be excluded from Consolidated Net Income any repurchases, repayments or redemptions of Investments, proceeds realized on the sale of Investments or return of capital to the Issuer or a Restricted Subsidiary to the extent such repurchases, repayments, redemptions, proceeds or returns increase the amount of Restricted Payments permitted under such section pursuant to Section 4.07.(a)(i)(3)(ii). In addition, for purposes of this definition, the term "non-recurring" means any charge, expense, loss or gain as of any date that is not reasonably likely to recur within the two years following the date of occurrence of such charge, expense, loss or gain; provided that if there is a charge, expense, loss or gain similar to such expense, loss or gain within the two years preceding such date, such expense, loss or gain shall not be deemed non-recurring and; provided further, that severance payments shall be considered "non-recurring" regardless of the frequency of the payment of such payments.

"Consolidated Subsidiaries" means, for any Person, any Subsidiary or other entity the accounts of which would be consolidated with those of such Person in its consolidated financial statements in accordance with GAAP.

"Contingent Obligations" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent:

(a) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(b) to advance or supply funds:

(1) for the purchase or payment of any such primary obligation, or

(2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Corporate Trust Office" means the principal office of the Trustee at which, at any particular time, its corporate trust business shall be conducted (which office is located as of the date of this Indenture at Wilmington Trust, National Association, 1100 North Market Street, Wilmington, Delaware 19890, Attention: EXCO Resources, Inc. Administrator, or at any other time at such other address as the Trustee may designate from time to time by notice to the Holders).

"Credit Facilities" means, collectively, one or more debt facilities (including, without limitation, the First Lien RBL Credit Agreement, the 1.75 Lien Credit Agreement and the Second Lien Credit Agreement), capital markets financings or other financing arrangements (including commercial paper facilities or indentures) providing for revolving credit loans, term loans, letters of credit, bankers acceptances, notes or other long-term indebtedness, including any mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof, in whole or in part, and any indentures or credit facilities or commercial paper facilities that replace, refund, supplement or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding, supplemental or refinancing facility, arrangement or indenture that increases the amount permitted to be borrowed or issued thereunder or alters the maturity thereof or adds additional borrowers or guarantors thereunder and whether by the same or any other agent, trustee, lender or group of lenders or holders.

"Crude Oil" means all crude oil and condensate.

"Currency Agreement" means any Swap Agreement with respect to currency values, including foreign exchange contract, currency swap agreement or other similar agreement with respect to currency values.

"Default" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"Definitive Note" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06(a) hereof, substantially in the form of Exhibit A hereto.

"Deposit Account Control Agreement" means a deposit account control agreement to be executed and delivered among the Issuer, any Guarantor, the RBL Agent, the Collateral Trustee and each bank at which the Issuer or any Guarantor maintains any deposit account, in each case, in accordance with such bank's standard form of control agreement and acceptable to the Collateral Trustee as to its rights and obligations, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Determination Date" means February 28 (or February 29, in the event of a leap year) and August 31 of each year.

"DIP Financing" means any post-petition financing under Section 364 of the Bankruptcy Code or any comparable provision of any other Bankruptcy Law.

"Discharge of Senior Priority Lien Obligations" has the meaning assigned to such term in the Intercreditor Agreement.

"Disinterested Member" means, with respect to any transaction, a member of the Issuer's Board of Directors who does not have any material direct or indirect financial interest (other than as an owner of Equity Interests in the Issuer or as an officer, manager or employee of the Issuer or any Restricted Subsidiary) in or with respect to such transaction and is not an Affiliate, or an officer, director, member of a supervisory, executive or management board or employee of any Person (other than the Issuer or a Restricted Subsidiary), who has any direct or indirect financial interest in or with respect to such transaction.

"Disposition" or "Dispose" means the sale, transfer, conveyance, license, lease, farm-out, exchange or other disposition (including any sale and leaseback transaction) of any Property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Disqualified Stock" means, with respect to any Person, any Equity Interest which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event:

(a) matures or is mandatorily redeemable (other than redeemable only for Equity Interest of such Person which is not itself Disqualified Stock) pursuant to a sinking fund obligation or otherwise;

(b) is convertible or exchangeable at the option of the holder for Indebtedness or Disqualified Stock; or

(c) is mandatorily redeemable or must be purchased upon the occurrence of certain events or otherwise, in whole or in part; in each case on or prior to the 181st day after the Stated Maturity of the Notes; provided, however, that any Equity Interest that would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require such Person to purchase or redeem such Equity Interest upon the occurrence of an "asset sale" or "change of control" occurring prior to the 181st day after the Stated Maturity of the Notes shall not constitute Disqualified Stock if:

(1) the "asset sale" or "change of control" provisions applicable to such Equity Interest are not more favorable to the holders of such Equity Interest than the terms applicable to the Notes in Sections 4.10 and 4.14; and

(2) any such requirement only becomes operative after compliance with such terms applicable to the Notes, including the purchase of any Notes tendered pursuant thereto. The amount of any Disqualified Stock that does not have a fixed redemption, repayment or repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were redeemed, repaid or repurchased on any date on which the amount of such Disqualified Stock is to be determined pursuant to this Indenture; provided, however, that if such Disqualified Stock could not be required to be redeemed, repaid or repurchased at the time of such determination, the redemption, repayment or repurchase price will be the book value of such Disqualified Stock as reflected in the most recent financial statements of such Person.

"Dollar-Denominated Production Payments" means production payment obligations recorded as liabilities in accordance with GAAP, together with all undertakings and obligations in connection therewith.

"Dollar Equivalent" means with respect to any monetary amount in a currency other than Dollars, at any time for determination thereof, the amount of Dollars obtained by converting such foreign currency involved in such computation into Dollars at the spot rate for the purchase of Dollars with the applicable foreign currency as published in The Wall Street Journal in the "Exchange Rates" column under the heading "Currency Trading" on the date two (2) Business Days prior to such determination. Except as described in Section 4.09, whenever it is necessary to determine whether the Issuer or any Restricted Subsidiary has complied with any covenant in this Indenture or a Default has occurred and an amount is expressed in a currency other than Dollars, such amount will be treated as the Dollar Equivalent determined as of the date such amount is initially determined in such currency.

"Dollars" or "$" refers to lawful money of the United States of America.

"Domestic Subsidiary" means, with respect to any Person, a Subsidiary of such Person that is incorporated or formed under the laws of the United States of America, any state thereof or the District of Columbia.

"East Texas/North Louisiana Area" has the meaning assigned to such term in the BG Joint Development Agreement as in effect on the Issue Date and as amended or restated thereafter.

"EBG Resources" means EBG Resources, LLC, a Delaware limited liability company.

"EBITDA" for any period means the sum of Consolidated Net Income, *plus* the following to the extent deducted in calculating such Consolidated Net Income:

(a) all income tax expense of the Issuer and its consolidated Restricted Subsidiaries;

(b) Consolidated Interest Expense;

(c) depreciation, depletion, exploration and amortization (including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) expense of the Issuer and its consolidated Restricted Subsidiaries (excluding amortization of expenses attributable to a prepaid operating activity item that was paid in cash in a prior period);

(d) all other non-cash charges of the Issuer and the consolidated Restricted Subsidiaries (excluding any such non-cash charge to the extent that it represents an accrual of or reserve for cash expenditures in any future period other than non-cash charges resulting from the application of Financial Accounting Standards Board Accounting Standards Codification Subtopic 410-20 for Asset Retirement Obligations); and

(e) unrealized non-cash foreign exchange losses of the Issuer and the consolidated Restricted Subsidiaries,

in each case, for such period, and less, to the extent included in calculating such Consolidated Net Income and in excess of any costs or expenses attributable thereto and deducted in calculating such Consolidated Net Income, the sum of:

(1) the amount of deferred revenues that are amortized during such period and are attributable to reserves that are subject to Volumetric Production Payments; and

(2) amounts recorded in accordance with GAAP as repayments of principal and interest pursuant to Dollar-Denominated Production Payments.

Notwithstanding the foregoing, the provision for taxes based on the income or profits of, and the depreciation and amortization and noncash charges of, a consolidated Restricted Subsidiary shall be added to Consolidated Net Income to compute EBITDA only to the extent (and in the same proportion, including by reason of minority interests) that the net income or loss of such Restricted Subsidiary was included in calculating Consolidated Net Income and only if a corresponding amount would be permitted at the date of determination to be dividended to the Issuer by such Restricted Subsidiary without prior approval (that has not been obtained), pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to such Restricted Subsidiary or its stockholders.

"Eligible Holders" means each Lead Holder that is a Holder on the date that any Transfer Notice is delivered or, as applicable, at the time that the Issuer seeks consent in connection with an election to be made by the Issuer pursuant to Section 2.01(c)(vi)(5).

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by 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.

"EOC" means EXCO Operating Company, LP, a Delaware limited partnership and its successors and permitted assigns.

"Equity Interests" means Capital Stock and all warrants, options or other rights to acquire Capital Stock; provided that any instrument evidencing Indebtedness convertible or exchangeable into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock, shall not be deemed to be an Equity Interest unless and until such instrument is so converted or exchanged, except, solely for purposes of a pledge of Equity Interests in connection with this Indenture, to the extent such instrument could be treated as "stock" of a controlled foreign corporation for purposes of Treasury Regulation Section 1.956-2(c)(2).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with the Issuer or any Guarantor, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for 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" means (a) 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 thirty (30) day

notice period is waived); (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) 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; (d) the Incurrence by any the Issuer, any Guarantor or any of their ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Issuer or any Guarantor or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the Incurrence by the Issuer or any Guarantor or any of their ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Issuer or any Guarantor or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Issuer or any Guarantor 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.

"ESAS" means Energy Strategic Advisory Services LLC, a Delaware limited liability company.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"EXCO PA" means EXCO Production Company (PA), LLC, a Delaware limited liability company.

"EXCO WV" means EXCO Production Company (WV), LLC, a Delaware limited liability company.

"Existing Unsecured Notes" means, collectively, the Issuer's 7.500% Senior Notes due 2018 (the "2018 Notes") and 8.500% Senior Notes due 2022, in each case, as outstanding on the Issue Date.

"Fair Market Value" means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Disinterested Members of the Issuer's Board of Directors in good faith.

"Fairfax" means Fairfax Financial Holdings Limited and any of its Affiliates or Subsidiaries.

"Farm-In Agreement" means an agreement whereby a Person agrees to pay all or a share of the drilling, completion or other expenses of an exploratory or development well (which agreement may be subject to a maximum payment obligation, after which expenses are shared in accordance with the working or participation interest therein or in accordance with the agreement of the parties) or perform the drilling, completion or other operation on such well in exchange for an ownership interest in an oil or gas property.

"Farm-Out Agreement" means a Farm-In Agreement, viewed from the standpoint of the party that transfers an ownership interest to another.

"First Lien RBL Credit Agreement" means that certain Amended and Restated Credit Agreement dated as of July 31, 2013 among the Issuer, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent thereunder, as the same was amended, supplemented, modified, restated, refinanced or replaced on or prior to the Issue Date and as may be amended, supplemented, modified, restated, refinanced or replaced from time to time after the Issue Date in accordance with the Intercreditor Agreement and with the same and/or different lenders and/or agents in accordance with the Intercreditor Agreement; provided that any increase in the principal amount of the Loans or Letters of Credit (each as defined in the First Lien RBL Credit Agreement) together with any other borrowings or other extensions of credit thereunder is permitted solely under Section 4.09(b)(1).

"First Lien RBL Documents" means, collectively, the First Lien RBL Credit Agreement and each security document, mortgage, note, guarantee, instrument and other "Loan Documents" (as defined in the First Lien RBL Credit Agreement) executed or delivered in connection with the First Lien RBL Credit Agreement at any time.

"GAAP" means generally accepted accounting principles in the United States of America as in effect on the Issue Date.

"Gen IV" means Gen IV Investment Opportunities, LLC and its Affiliate Vega Asset Partners, LP.

"Governing Body" means, as to any Person, the Board of Directors or, if such Person is managed by a single entity and not a Board of Directors, the Board of Directors of the managing entity of such Person.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Governmental Requirement" means any applicable law, statute, code, ordinance, order, determination, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, authorization or other directive or requirement, whether now or hereinafter in effect, including, without limitation, Environmental Laws, energy and public utility laws and regulations and occupational, safety and health standards or controls, of any Governmental Authority.

"Government Securities" means, with respect to a federal government, securities that are:

(3) direct obligations of, or obligations guaranteed by, such federal government for the timely payment of which its full faith and credit is pledged; or

(4) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of such federal government, the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by such federal government,

which, in either case, are not callable or redeemable at the option of the issuers thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such Government Securities or a specific payment of principal of or interest on any such Government Securities held by such custodian for the account of the holder of such depository receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Securities or the specific payment of principal of or interest on the Government Securities evidenced by such depository receipt.

"Guarantee" of or by any Person (in this definition, the "guarantor") means 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 of the guarantor, direct or indirect, (a) 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, (b) 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, (c) 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 (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

"Guarantor" means each Restricted Subsidiary that is a party hereto or hereafter executes and delivers to the Trustee, a supplemental indenture to this Indenture.

"Hazardous Materials" means 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" means, with respect to any Person, the obligations of such Person under any Swap Agreement, including Currency Agreements, Interest Rate Agreements and Commodity Agreements.

"holder" means, with reference to any Indebtedness or other Obligations, any holder or lender of, or trustee or collateral or administrative agent or other authorized representative with respect to, such Indebtedness or Obligations, and, in the case of Hedging Obligations, any counter-party to such Hedging Obligations.

"Holder" means the Person in whose name a Note is registered to on the applicable registrar's books.

"Hydrocarbons" means all Crude Oil and Natural Gas produced from or attributable to the Oil and Gas Properties of the Issuer and the Guarantors.

"Incur" means issue, assume, Guarantee, incur or otherwise become liable for Indebtedness; provided, however, that any Indebtedness of a Person existing at the time such Person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Restricted Subsidiary. Notwithstanding the foregoing proviso, any Indebtedness that is extinguished, retired or repaid in connection with a Person merging with or becoming a Subsidiary of a Restricted Subsidiary will not be deemed to be the Incurrence of Indebtedness. The term "Incurrence" when used as a noun shall have a correlative meaning.

Solely for purposes of determining compliance with Section 4.09 of this Indenture the following will not be deemed to be the Incurrence of Indebtedness:

(a) amortization of debt discount or the accretion of principal with respect to a non-interest bearing or other discount security;

(b) the payment of regularly scheduled interest in the form of additional Indebtedness of the same instrument or the payment of regularly scheduled dividends on Capital Stock in the form of additional Capital Stock of the same class and with the same terms;

(c) the obligation to pay a premium in respect of Indebtedness arising in connection with the issuance of a notice of redemption or making of a mandatory offer to purchase such Indebtedness; and

(d) unrealized losses or charges in respect of Hedging Obligations (including those resulting from the application of ASC815).

"Indebtedness" means, with respect to any Person on any date of determination (without duplication):

(a) the principal in respect of (1) indebtedness of such Person for money borrowed and (2) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, including, in each case, any premium on such indebtedness to the extent such premium has become due and payable;

(b) all Capital Lease Obligations of such Person and all Attributable Debt in respect of Sale/Leaseback Transactions entered into by such Person;

(c) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business);

(d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, bankers' acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (a) through (c) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the tenth Business Day following payment on the letter of credit);

(e) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock of such Person or, with respect to any Subsidiary of such Person, the amount of all obligations of such Subsidiary with respect to any Preferred Stock of such Subsidiary, the principal amount of such Disqualified Stock or Preferred Stock to be determined in accordance with this Indenture;

(f) all obligations of the type referred to in clauses (a) through (e) above of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee;

(g) all obligations of the type referred to in clauses (a) through (f) above of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the value of such property or assets and the amount of the obligation so secured;

(h) to the extent not otherwise included in this definition, Hedging Obligations (after giving effect to any netting obligations) of such Person; and

(i) any warranties or guaranties by such Person of production or payment with respect to a Production Payment;

provided, however, that notwithstanding the foregoing, Indebtedness shall be deemed not to include (1) Contingent Obligations (other than of a type (x) referenced in clause (b)(2) of the definition thereof, (y) the primary obligation (as referenced in such definition) of which constitutes damages (of any kind whatsoever, including actual, special, direct, consequential or punitive) or a claim therefor as to which there is a reasonable possibility of an adverse determination (but excluding any such damages or claims with respect to which the applicable third party insurance provider has not denied coverage) or (z) in accordance with GAAP, that would be required to be shown on the balance sheet of any obligor as indebtedness) Incurred in the ordinary course of business (provided that this clause (1) shall not apply for purposes of determining what constitutes a "primary obligation" for purposes of the definition of Contingent Obligations); (2) deferred or prepaid revenues; (3) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; (4) any obligation (but excluding any obligation constituting debt for borrowed money, including under obligations referenced under immediately preceding clauses (a) and (b)) of a Person in respect of a Farm-In Agreement, Farm-Out Agreement, joint development arrangements or similar arrangement whereby such Person agrees to pay all or a share of the drilling, completion or other expenses of an exploratory or development well (which agreement may be subject to a maximum payment obligation, after which expenses are shared in accordance with the working or participation interest therein or in accordance with the agreement of the parties) or perform the drilling, completion or other operation on such well in exchange for an ownership interest in an Oil and Gas Property; (5) in-kind obligations relating to net oil, natural gas liquids or natural gas balancing positions arising in the ordinary course of business; (6) in the case of the Issuer and its Restricted Subsidiaries, intercompany liabilities in connection with the cash management, tax and accounting operations between and among the Issuer and any Guarantors; (7) any obligations in respect of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto; (8) non-compete or consulting obligations Incurred in connection with any acquisition; (9) reserves for deferred income taxes; and (10) obligations with respect to prepayments received in the ordinary course of business under operating agreements, development agreements, offtake agreements or similar arrangements.

Notwithstanding anything in this Indenture to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Accounting Standards Codification Topic No. 815, Derivatives and Hedging, and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Indenture as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all obligations as described above; provided, however, that in the case of Indebtedness sold at a discount, the amount of such Indebtedness at any time will be the accreted value thereof at such time.

"Indenture" means this Indenture, as amended or supplemented from time to time.

"Independent Qualified Party" means an investment banking firm, accounting firm or appraisal firm of national standing; provided, however, that such firm is not an Affiliate of the Issuer.

"Initial Notes" has the meaning set forth in the recitals hereto.

"Intercreditor Agreement" means that certain amended and restated Intercreditor Agreement dated as of October 19, 2015, among (after giving effect to the Intercreditor Agreement Amendment) the Senior Priority Lien Representative and the Collateral Trustee (and acknowledged and agreed by the Issuer and the Guarantors), as the same may be amended, restated, amended and restated, supplemented, replaced (whether upon or after termination or otherwise) modified or restated in accordance with the terms thereof.

"Intercreditor Agreement Amendment" means the Amendment, dated as of March 15, 2017, to the Intercreditor Agreement, among the Senior Priority Lien Representative and the Collateral Trustee (as defined in the Second Lien Credit Agreement) (and acknowledged and agreed by the Credit Parties, the Priority Lien Collateral Trustee and the Collateral Trustee).

"Interest Payment Date" means March 20 and September 20 of each year to stated maturity.

"Interest Period" means the period commencing on and including an Interest Payment Date and ending on and including the day immediately preceding the next succeeding Interest Payment Date, with the exception that the first interest period shall commence on and include the Issue Date and end on and exclude September 20, 2017.

"Interest Rate Agreement" means any Swap Agreement with respect to exposure to interest rates, including an interest rate swap agreement, interest rate cap agreement or other financial agreement or arrangement with respect to exposure to interest rates.

"Investment Grade Rating" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P or any equivalent rating by any Rating Agency.

"Investment" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including Guarantees of Indebtedness or other obligations), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit and advances to customers and commission, travel and similar advances to employees, directors, officers, members of management, manufacturers and consultants, in each case, made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

For purposes of the definition of "Unrestricted Subsidiary" and Section 4.07:

(a) "Investments" shall include the portion (proportionate to the Issuer's Equity Interest in such Subsidiary) of the Fair Market Value of the net assets of a Subsidiary of the Issuer at the time that such Subsidiary is designated an Unrestricted Subsidiary; provided that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Issuer shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to (1) the Issuer's "Investment" in such Subsidiary at the time of such redesignation less (2) the portion (proportionate to the Issuer's Equity Interest in such Subsidiary) of the Fair Market Value of the net assets of such Subsidiary at the time of such redesignation;

(b) any Property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer, as in each case as determined in good faith by the Board of Directors of the Issuer; and

(c) the amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced by any subsequent dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Issuer or a Restricted Subsidiary in respect of such Investment.

"Issue Date" means March 15, 2017.

"Issuer" means EXCO Resources, Inc., until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"Issuer Order" means a written request or order signed on behalf of the Issuer by an Officer of the Issuer, and delivered to the Trustee.

"Junior Lien" means a Lien junior in priority to the Senior Priority Liens and the Priority Liens and equal in priority to the Junior Priority Liens, but which is junior in right of the payment waterfall (as provided in the collateral trust agreement governing the Junior Priority Lien Debt) as provided in the Intercreditor Agreement, granted by the Issuer or any Guarantor in favor of holders of Junior Lien Debt (or any collateral trustee or representative in connection therewith) at any time, upon any Property of the Issuer or any Guarantor to secure Junior Lien Obligations (provided that, in all events, such Property shall also be subject to Liens securing such aforementioned Senior Priority Liens, Priority Liens and Junior Priority Liens).

"Junior Lien Collateral Agent" means the collateral trustee or other representative of lenders or holders of Junior Lien Obligations designated pursuant to the terms of the Junior Lien Documents and the Intercreditor Agreement, in each case, together with its successors and assigns.

"Junior Lien Debt" means (a) Indebtedness of the Issuer and the Guarantors under the Second Lien Credit Agreement and (b) any Indebtedness (other than intercompany Indebtedness owing to the Issuer or its Subsidiaries) of the Issuer or any Guarantor permitted to be Incurred under Section 4.09(b)(3)(y) or (z) (including any Refinancing Indebtedness with respect to Junior Lien Debt with other Junior Lien Debt to the extent contemplated and permitted by the Intercreditor Agreement) that is secured by a Junior Lien and that is permitted to be Incurred and so secured under each applicable Secured Debt Document; provided that, in the case of any Indebtedness referred to in clause (b) of this definition:

(1) (i) such Indebtedness does not mature and does not have any mandatory or scheduled payments or sinking fund obligations prior to one-hundred eighty (180) days after the maturity date of the Notes (except as a result of a customary change of control, events of loss or asset sale repurchase offer provisions) and (ii) the principal amount of such Indebtedness does not exceed the principal amount of, plus any accrued and unpaid interest on, the Junior Lien Obligations being refinanced or exchanged;

(2) on or before the date on which any such Indebtedness is Incurred by the Issuer or any Guarantor, such Indebtedness is designated by the Issuer, in an Officers' Certificate delivered to the Junior Lien Collateral Agent and Collateral Trustee, as "Junior Lien Debt," and such Officers' Certificate also certifies that such Indebtedness is permitted and with respect to any other requirements set forth in the Intercreditor Agreement;

(3) a Junior Lien Representative is designated with respect to such Indebtedness and executes and delivers an Additional Secured Debt Designation on behalf of itself and all holders of such Indebtedness;

(4) all relevant filings and recordations necessary to ensure that such Indebtedness is secured by the Collateral in accordance with the applicable security documents are authorized, executed (if applicable) and recorded in each appropriate jurisdiction (provided that this clause (4) may be satisfied on a post-closing basis if permitted by the Junior Lien Representative); and

(5) all other requirements set forth in the Intercreditor Agreement and in any applicable security documents as to the confirmation, grant or perfection of the Liens of the holders of Junior Lien Debt to secure such Indebtedness or obligations in respect thereof are satisfied.

"Junior Lien Documents" means, collectively, any indenture, credit agreement or other agreement or instrument pursuant to which Junior Lien Debt is Incurred and the documents pursuant to which Junior Lien Obligations are granted.

"Junior Lien Obligations" means Junior Lien Debt and all other principal (including reimbursement obligations and obligations to provide cash collateral with respect to letters of credit whether or not drawn), interest (including, to the extent legally permitted, all interest accrued thereon after the commencement of any insolvency or liquidation proceeding at the rate, including any applicable post-default rate even if such interest is not enforceable, allowable or allowed as a claim in such proceeding), premium (if any), fees, indemnifications, reimbursements, expenses, and other liabilities in respect thereof.

"Junior Lien Representative" means, in the case of any Series of Junior Lien Debt, the trustee, agent or representative of the holders of such Series of Junior Lien Debt who maintains the transfer register for such Series of Junior Lien Debt and is appointed as a representative of the Junior Lien Debt (for purposes related to the administration of the security documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Junior Lien Debt.

"Junior Priority Lien" means a Lien junior in priority to the Senior Priority Liens and the Priority Liens and equal in priority to the Junior Liens, but which is senior in right of the payment waterfall (as provided in the collateral trust agreement governing the Junior Priority Lien Debt), in each case, as provided in the Intercreditor Agreement, granted by the Issuer or any Guarantor in favor of holders of Junior Priority Lien Debt (or any collateral trustee or representative in connection therewith) at any time, upon any Property of the Issuer or any Guarantor to secure Junior Priority Lien Obligations (provided that, in all events, such Property shall also be subject to Liens securing such aforementioned Senior Priority Liens and Priority Liens).

"Junior Priority Lien Collateral Agent" means the collateral trustee or other representative of lenders or holders of Junior Priority Lien Obligations designated pursuant to the terms of the Junior Priority Lien Documents and the Intercreditor Agreement, in each case, together with its successors and assigns.

"Junior Priority Lien Debt" means (a) the 1.75 Lien Credit Agreement and (b) any other Indebtedness (other than intercompany Indebtedness owing to the Issuer or its Subsidiaries) of the Issuer or any Guarantor permitted to be Incurred under Section 4.09(b)(3)(x) (including any Refinancing Indebtedness with respect to Junior Priority Lien Debt with other Junior Priority Lien Debt to the extent contemplated and permitted by the Intercreditor Agreement) that is secured by a Junior Priority Lien and that is permitted to be Incurred and so secured under each applicable Secured Debt Document; provided that, in the case of any Indebtedness referred to in clause (b) of this definition:

(1) (i) such Indebtedness does not mature and does not have any mandatory or scheduled payments or sinking fund obligations prior to one-hundred eighty (180) days after the maturity date of the Notes (except as a result of a customary change of control or asset sale repurchase offer provisions) and (ii) the principal amount of such Indebtedness does not exceed the principal amount of, plus any accrued and unpaid interest on, the Junior Priority Lien Obligations being refinanced or exchanged;

(2) on or before the date on which any such Indebtedness is Incurred by the Issuer or any Guarantor, such Indebtedness is designated by the Issuer, in an Officers' Certificate delivered to the Junior Priority Lien Collateral Agent and the Collateral Trustee, as "Junior Priority Lien Debt," and such Officers' Certificate also certifies that such Indebtedness is permitted and with respect to any other requirements set forth in the Intercreditor Agreement;

(3) a Junior Priority Lien Representative is designated with respect to such Indebtedness and executes and delivers an Additional Secured Debt Designation on behalf of itself and all holders of such Indebtedness;

(4) all relevant filings and recordations necessary to ensure that such Indebtedness is secured by the Collateral in accordance with the applicable security documents are authorized, executed (if applicable) and recorded in each appropriate jurisdiction (provided that this clause (4) may be satisfied on a post-closing basis if permitted by the Junior Priority Lien Representative); and

(5) all other requirements set forth in the Intercreditor Agreement and in any applicable security documents as to the confirmation, grant or perfection of the Liens of the holders of Junior Priority Lien Debt to secure such Indebtedness or obligations in respect thereof are satisfied.

&4147;Junior Priority Lien Documents" means, collectively, any indenture, credit agreement or other agreement or instrument pursuant to which Junior Priority Lien Debt is Incurred and the documents pursuant to which Junior Priority Lien Obligations are granted.

"Junior Priority Lien Obligations" means Junior Priority Lien Debt and all other principal (including reimbursement obligations and obligations to provide cash collateral with respect to letters of credit whether or not drawn), interest (including, to the extent legally permitted, all interest accrued thereon after the commencement of any insolvency or liquidation proceeding at the rate, including any applicable post-default rate even if such interest is not enforceable, allowable or allowed as a claim in such proceeding), premium (if any), fees, indemnifications, reimbursements, expenses, and other liabilities in respect thereof.

"Junior Priority Lien Representative" means, in the case of any Series of Junior Priority Lien Debt, the trustee, agent or representative of the holders of such Series of Junior Priority Lien Debt who maintains the transfer register for such Series of Junior Priority Lien Debt and is appointed as a representative of the Junior Priority Lien Debt (for purposes related to the administration of the security documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Junior Priority Lien Debt.

"Lead Holders" means Fairfax, ESAS, OCM EXCO Holdings LLC and Gen IV and, in each case, their respective Affiliates (excluding, in each case, the Issuer and its Subsidiaries).

"liabilities" means, as to any Person, all indebtedness, liabilities and obligations of such Person, whether matured or unmatured, liquidated or unliquidated, primary or secondary, direct or indirect, absolute, fixed or contingent, and whether or not required to be considered pursuant to GAAP.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Liquidity," means an amount equal to (a) the sum of (1) the Issuer's Unrestricted Cash and Cash Equivalents and (2) any amounts available to be borrowed under the First Lien RBL Credit Agreement (to the extent then available) less (b) the face amount of any letters of credit outstanding under the First Lien RBL Credit Agreement. With respect to any Interest Payment Date, Liquidity shall be calculated as of the applicable Determination Date after giving effect to any cash interest on the 1.75 Lien Term Loan which has been paid during the relevant interest period and on a pro forma basis after giving effect to any payment of Cash Interest on the Notes and payment of cash interest on the 1.75 Lien Term Loan expected to be paid on the relevant Interest Payment Date. With respect to any determination of Liquidity required under Section 4.07 or Section 4.26(a) of this Indenture, Liquidity shall be calculated as of the date of the making of such Restricted Payment or September 15, 2018, as applicable, before giving effect to any Restricted Payment of the 2018 Notes or any payment of the 2018 Notes at maturity, as applicable. With respect to any determination required under Section 4.26(b) of this Indenture, Liquidity shall be calculated as of October 26, 2020 after giving effect to any payment of any obligations under the Second Lien Credit Agreement and/or the 1.75 Lien Credit Agreement at maturity, as applicable.

"Marcellus Development Costs" means the costs and expenses Incurred in the conduct of development operations in the Appalachian Area pursuant to the Marcellus JV Documents.

"Marcellus Holding Companies" means one or more Unrestricted Subsidiaries formed in connection with the Marcellus Joint Venture to facilitate the transfer of an undivided 49.75% interest in the Marcellus JV Oil and Gas Assets to the Marcellus JV Partner.

"Marcellus Joint Development Agreement" means that certain Joint Development Agreement dated as of June 1, 2010, among one or more of the Issuer's Subsidiaries, the Marcellus JV Partner, the Marcellus Holding Companies and the Marcellus JV Operator with respect to the Marcellus Joint Venture.

"Marcellus Joint Venture" means that certain joint venture arrangement between the Issuer and one or more of its Subsidiaries and an unrelated third party (the "Marcellus JV Partner") and one or more of its Subsidiaries to develop and operate the Marcellus JV Oil and Gas Assets.

"Marcellus JV Closing Date" means June 1, 2010.

"Marcellus JV Documents" means the Marcellus Joint Development Agreement, the Marcellus Operator LLC Agreement, the Marcellus Midstream LLC Agreement, the Marcellus Transfer Agreement and any other documents, instruments, agreements or certificates contemplated by, or executed in connection with, the Marcellus Joint Development Agreement, in each case, as the same may be amended, modified or supplemented from time to time.

"Marcellus JV Oil and Gas Assets" has the meaning assigned to the term "Subject Oil and Gas Assets" in the Marcellus Joint Development Agreement as in effect on the Marcellus JV Closing Date and as amended or restated thereafter.

"Marcellus JV Operator" means the operator of the Marcellus JV Oil and Gas Assets located in the Appalachian Area.

"Marcellus JV Partner" has the meaning assigned to such term in the definition of "Marcellus Joint Venture".

"Marcellus Midstream Assets" means the gas gathering and pipeline systems and related facilities associated with the Marcellus Shale portion of the Marcellus JV Oil and Gas Assets.

"Marcellus Midstream LLC Agreement" means that certain Second Amended and Restated Limited Liability Company Agreement of Marcellus Midstream Owner, dated as of June 1, 2010, as such Limited Liability Company Agreement may thereafter be amended, supplemented or otherwise modified from time to time.

"Marcellus Midstream Owner" means the direct or indirect owner of the Marcellus Midstream Assets.

"Marcellus Operator LLC Agreement" means that certain Second Amended and Restated Limited Liability Company Agreement of the Marcellus JV Operator dated as of June 1, 2010.

"Marcellus Shale" means (a) with respect to the Commonwealth of Pennsylvania, those subsurface depths that are below the base of (but excluding) the Haskill Sandstone Formation (Base of Elk Sequence) formation at a measured depth of 2,758', as identified by the Litho Density Compensated Neutron Array Induction Temperature Log dated June 7, 2005 of the Seneca Resources operated Fee PGS SGL No. 44 (API 37-047-23649) located in Elk County, Pennsylvania, (b) with respect to the State of West Virginia, those subsurface depths that are below the base of (but excluding) the Brallier Formation (Base of Elk Sequence) formation at a measured depth of 6,612', as identified by the Litho Density Compensated Neutron Array Induction Temperature Log dated October 8, 2008 of the EXCO – North Coast Energy, Inc. operated Wentz 4HS (API 47-001-02982) located in Barbour County, West Virginia, recognizing that actual depths may vary, and (c) with respect to the State of New York, those subsurface depths that are below the base of (but excluding) the Genesee Formation at a measured depth of 2,548', as identified by the Density/Neutron, Gamma/Temperature Log dated May 6, 2005 of the Fortuna Energy, Inc. operated Cotton-Hanlon #1 well (API 31-107-23185) located in Tioga County, New York.

"Marcellus Transfer Agreement" means that certain Membership Interest Transfer Agreement dated as of June 1, 2010, among the Issuer or one or more of its Restricted Subsidiaries and the Marcellus JV Partner pursuant to which the Issuer or one or more of its Restricted Subsidiaries transfers to the Marcellus JV Partner (a) 100% of the Equity Interests of the Marcellus Holding Companies and (b) 50% of the Equity Interests of each of the Marcellus JV Operator and the Marcellus Midstream Owner.

"Material Adverse Effect" means a material adverse effect on (a) the assets or properties, financial condition, businesses or operations of the Issuer and the Restricted Subsidiaries taken as a whole, (b) the ability of the Issuer or any Guarantor to carry out its business as of the date of this Indenture or as proposed at the date of this Indenture to be conducted, (c) the ability of the Issuer or any Guarantor to perform fully and on a timely basis its respective obligations under any of the Note Documents to which it is a party, or (d) the validity or enforceability of any of the Note Documents or the rights and remedies of the Trustee, the Collateral Trustee or the Holders under this Indenture and the other Note Documents.

"Material Domestic Subsidiary" means any Domestic Subsidiary of the Issuer that owns or holds, directly or indirectly, assets, properties or interests (including Oil and Gas Properties, whether owned directly or indirectly) with an aggregate fair market value, on a consolidated basis, greater than five percent (5%) of the aggregate fair market value of all of the assets, properties and interests (including Oil and Gas Properties, whether owned directly or indirectly) of the Issuer and the Restricted Subsidiaries, on a consolidated basis; provided that if the aggregate fair market value of all of the assets, properties and interests (including Oil and Gas Properties, whether owned directly or indirectly) of all Domestic Subsidiaries that would not constitute Material Domestic Subsidiaries exceeds 5% of the

aggregate fair market value of all of the assets, properties and interests (including Oil and Gas Properties, whether owned directly or indirectly) of the Issuer and the Restricted Subsidiaries, on a consolidated basis, then one or more of such excluded Domestic Subsidiaries shall for all purposes of this Indenture be deemed to be Material Domestic Subsidiaries in descending order based on the aggregate fair market value of their assets, properties or interests (including Oil and Gas Properties, whether owned directly or indirectly) until such excess has been eliminated.

"Material Indebtedness" means Indebtedness under the First Lien RBL Documents, the 1.75 Lien Credit Agreement, the Second Lien Credit Agreement and the Existing Unsecured Notes (and, in each case, any Refinancing Indebtedness in respect thereof) and any other Indebtedness (other than the Notes) of the Issuer or any one or more of the Restricted Subsidiaries that in each case is in an aggregate principal amount exceeding $10,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Issuer or any Guarantor in respect of any Hedging Obligations at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Issuer or such Guarantor would be required to pay if the agreements with respect to such Hedging Obligations were terminated at such time.

"Material Sales Contract" means, as of any date of determination, any agreement for the sale of Hydrocarbons from the Oil and Gas Properties to which the Issuer or any Restricted Subsidiary is a party if the aggregate volume of Hydrocarbons sold pursuant to such agreement during the twelve (12) months immediately preceding such date equals or exceeds ten percent (10%) of the aggregate volume of Hydrocarbons sold by the Issuer and the Restricted Subsidiaries, on a consolidated basis, from the Oil and Gas Properties during the twelve (12) months immediately preceding such date.

"Moody's" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"Mortgaged Properties" means the Oil and Gas Properties described in one or more duly executed, delivered and filed Mortgages evidencing a Lien prior and superior in right to any other Person (other than the Senior Priority Lien Collateral Agent) in favor of the Collateral Trustee for the benefit of the Secured Parties and subject only to the Liens permitted pursuant to Section 4.12.

"Mortgages" means all mortgages, deeds of trust, amendments to mortgages, security agreements, assignments of production, pledge agreements, collateral mortgages, collateral chattel mortgages, collateral assignments, financing statements and other documents, instruments and agreements evidencing, creating, perfecting or otherwise establishing the Liens required by Section 4.24.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Natural Gas" means all natural gas, distillate or sulphur, natural gas liquids and all products recovered in the processing of natural gas (other than condensate) including, without limitation, natural gasoline, coalbed methane gas, casinghead gas, iso-butane, normal butane, propane and ethane (including such methane allowable in commercial ethane).

"Net Cash Proceeds" means:

(a) with respect to any issuance, Incurrence or Disposition of Capital Stock or Indebtedness, the cash proceeds of such issuance Incurrence or Disposition net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, discounts or commissions and brokerage, consultant and other fees actually incurred in connection with such issuance, Incurrence or Disposition and net of taxes paid or payable as a result thereof; and

(b) with respect to any Asset Sale, cash payments received therefrom, including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise and cash proceeds from the sale or other disposition of any non-cash consideration received as consideration, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Indebtedness or other obligations relating to such properties, in each case net of (without duplication):

(1) all legal, title and recording tax expenses, commissions and other fees and expenses incurred, including without limitation, all attorney's fees, accountants' fees, advisors' or other consultants' fees and other fees actually incurred in connection therewith, and all federal, state, provincial, foreign and local taxes required to be accrued as a liability under GAAP, as a consequence of such Asset Sale;

(2) all payments made on any Indebtedness which is secured by any assets subject to such Asset Sale, in accordance with the terms of any Lien upon or other security agreement of any kind with respect to such assets, or which must by its terms, or in order to obtain a necessary consent to such Asset Sale, or by applicable law, be repaid out of the proceeds from such Asset Sale;

(3) all distributions and other payments required to be made to minority interest holders in Restricted Subsidiaries or to holders of royalties or similar interests as a result of such Asset Sale;

(4) the deduction of appropriate amounts provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the property or other assets disposed in such Asset Sale and retained by the Issuer or any Restricted Subsidiary after such Asset Sale; and

(5) any portion of the purchase price from an Asset Sale placed in escrow, whether as a reserve for adjustment of the purchase price, for satisfaction of indemnities in respect of such Asset Sale or otherwise in connection with that Asset Sale; provided, however, that upon the termination of that escrow, Net Cash Proceeds will be increased by any portion of funds in the escrow that are released to the Issuer or any Restricted Subsidiary.

provided that, with respect to proceeds of any Asset Sale that are not applied or invested as provided in Section 4.10, no such unapplied or uninvested proceeds shall constitute Net Cash Proceeds until the aggregate amount of all such unapplied or uninvested proceeds shall exceed $20,000,000, and then all of such unapplied or uninvested proceeds shall constitute Net Cash Proceeds.

"Net Working Capital" means (a) all current assets of the Issuer and all of its Restricted Subsidiaries excluding current assets under any Commodity Agreements less (b) all current liabilities of the Issuer and all of its Restricted Subsidiaries, excluding (1) the current liabilities included in Indebtedness and (ii) any current liabilities under any Commodity Agreements, in each case as set forth in the consolidated financial statements of the Issuer prepared in accordance with GAAP.

"Non-Guarantor Restricted Subsidiary" means a Restricted Subsidiary of the Issuer that is not a Guarantor.

"Non-Recourse Debt" means Indebtedness:

(a) as to which neither the Issuer nor any of its Restricted Subsidiaries (1) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (2) is directly or indirectly liable as a guarantor, surety or otherwise or (3) constitutes a lender;

(b) as to which the lenders thereof will not have any recourse to the Equity Interests or Property of the Issuer or any of its Restricted Subsidiaries (other than the Equity Interests of an Unrestricted Subsidiary (to the extent such Unrestricted Subsidiary is the borrower or guarantor of such Non-Recourse Debt)); and

(c) no default or event of default with respect to which (including any rights that the holders thereof may have to take enforcement action against an Unrestricted Subsidiary) would permit upon notice, lapse of time or both any holder of any other Indebtedness of the Issuer or any of its Restricted Subsidiaries to declare a default or event of default on such other Indebtedness or cause the payment, repurchase, redemption, defeasance or other acquisition or retirement for value thereof to be accelerated or payable prior to any scheduled principal payment, scheduled sinking fund payment or stated maturity.

"Non-Recourse Purchase Money Indebtedness" means Indebtedness (other than Capital Lease Obligations) of the Issuer or any Guarantor Incurred in connection with the acquisition by the Issuer or such Guarantor in the ordinary course of business of fixed assets used in the Oil and Gas Business (including office buildings and other real property used by the Issuer or such Guarantor in conducting its operations) with respect to which:

(a) the holders of such Indebtedness agree that they will look solely to the fixed assets so acquired which secure such Indebtedness, and neither the Issuer nor any Restricted Subsidiary (1) is directly or indirectly liable for such Indebtedness (whether as a guarantor, surety or otherwise) or (2) provides credit support, including any undertaking, Guarantee, agreement or instrument that would constitute Indebtedness (other than the grant of a Lien on such acquired fixed assets); and

(b) no default or event of default with respect to such Indebtedness would cause, or permit (after notice or passage of time or otherwise), any holder of any other Indebtedness of the Issuer or a Guarantor to declare a default or event of default on such other Indebtedness or cause the payment, repurchase, redemption, defeasance or other acquisition or retirement for value thereof to be accelerated or payable prior to any scheduled principal payment, scheduled sinking fund payment or stated maturity.

"Note Documents" means this Indenture, the Intercreditor Agreement, the Security Instruments, the Purchase Agreement, the Warrant Agreement, the Warrants and all other agreements, instruments, documents and certificates now or hereafter executed and delivered by the Issuer or any Guarantor to, or in favor of, the Holders, the Trustee or the Collateral Trustee in connection with this Indenture or the transactions contemplated hereby.

"Notes" has the meaning stated in the first recital of this Indenture and more particularly means any Notes authenticated and delivered under this Indenture. The Initial Notes and any PIK Notes subsequently issued shall be treated as a single class for all purposes under this Indenture, including waivers, amendments, redemptions and offers to purchase. Unless the context otherwise requires, all references to the Notes shall include the Initial Notes and any PIK Notes.

"NYMEX" means the New York Mercantile Exchange.

"NYMEX Prices" means, as of any date of determination, the forward month prices for the most comparable hydrocarbon commodity applicable to such future production month for a sixty (60) month period (or such shorter period if forward month prices are not quoted for a reasonably comparable hydrocarbon commodity for the full sixty (60) month period), with such prices increased by five percent (5%) of the last quoted forward month price of such period for the sixty first (61st) month and then held constant thereafter, as such prices are (a) quoted on the NYMEX (or its successor) calculated as of a date not more than thirty (30) days prior to the date of determination (the "calculation date") and (b) adjusted for energy content, quality and basis differentials; provided that with respect to estimated future production for which prices are defined, within the meaning of SEC guidelines, by contractual arrangements excluding escalations based upon future conditions, then such contract prices shall be applied to future production subject to such arrangements.

"Obligations" means any and all obligations of every nature, contingent or otherwise, whether now existing or hereafter arising, of the Issuer or any Guarantor from time to time owed under any Note Document, whether for principal, interest, funding indemnification amounts, fees, premium, expenses (including reasonable fees and expenses of attorneys, agents and advisors), indemnification or otherwise.

"Officer" means the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the Chief Accounting Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer, the Controller or the Secretary of the Issuer or any other Person, as the case may be.

"Officers' Certificate" means a certificate signed on behalf of the Issuer by any two Officers of the Issuer, one of whom must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the Issuer, that meets the requirements set forth in this Indenture.

"OID Legend" means the legend set forth in Section 2.06(b)(ii) hereof to be placed on all Notes issued under this Indenture.

"Oil and Gas Business" means:

(a) the acquisition, exploration, exploitation, development, operation and disposition of interests in Hydrocarbons;

(b) the gathering, marketing, distribution, treating, processing, storage, refining, selling and transporting of any production from such interests or properties and the marketing of Hydrocarbons obtained from unrelated Persons;

(c) any business relating to or arising from exploration for or exploitation, development, production, treatment, processing, storage, refining, transportation, gathering or marketing of Hydrocarbons and products produced in association therewith;

(d) any other related energy business, including power generation and electrical transmission business where fuel required by such business is supplied, directly or indirectly, from Hydrocarbons produced substantially from properties in which the Issuer or the Restricted Subsidiaries, directly or indirectly, participate;

(e) any business relating to oil field sales and service; and

(f) any activity necessary, appropriate or incidental to the activities described in the preceding clauses (a) through (e) of this definition.

"Oil and Gas Property" means: (a) direct and indirect interests in and rights with respect to oil, gas, mineral and related properties and assets of any kind and nature, direct or indirect, including, without limitation, wellbore interests, working, royalty and overriding royalty interests, mineral interests, leasehold interests, production payments, operating rights, net profits interests, other non-working interests, contractual interests, non-operating interests and rights in any pooled, unitized or communitized acreage by virtue of such interest being a part thereof; (b) interests in and rights with respect to Hydrocarbons other minerals or revenues therefrom and contracts and agreements in connection therewith and claims and rights thereto (including oil and gas leases, operating agreements, unitization, communitization and pooling agreements and orders, division orders, transfer orders, mineral deeds, royalty deeds, oil and gas sales, exchange and processing contracts and agreements and, in each case, interests thereunder), and surface interests, fee interests, reversionary interests, reservations and concessions related to any of the foregoing; (c) easements, rights-of-way, licenses, permits, leases, and other interests associated with, appurtenant to, or necessary for the operation of any of the foregoing; (d) interests in oil, gas, water, disposal and injection wells, equipment and machinery (including well equipment and machinery), oil and gas production, gathering, transmission, compression, treating, processing and storage facilities (including tanks, tank batteries, pipelines and gathering systems), pumps, water plants, electric plants, gasoline and gas processing plants, refineries and other tangible or intangible, movable or immovable, real or personal property and fixtures located on, associated with, appurtenant to, or necessary for the operation of any of the foregoing; and (e) all seismic, geological, geophysical and engineering records, data, information, maps, licenses and interpretations.

"Opinion of Counsel" means a written opinion from legal counsel which legal counsel is acceptable to the Trustee. The counsel may be an employee of or counsel to the Issuer.

"Organizational Documents" means (a) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, (b) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (c) with respect to any general partnership, its partnership agreement, as amended, and (d) with respect to any limited liability company, its certificate of formation or articles of organization, as amended, and its limited liability company agreement or operating agreement, as amended.

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Acquisition Indebtedness" means Indebtedness of the Issuer or any of its Restricted Subsidiaries in an aggregate principal amount outstanding not to exceed $50,000,000 (less the aggregate principal amount outstanding pursuant to Section 4.09(b)(7) to the extent constituting Refinancing Indebtedness of Permitted Acquisition Indebtedness) (the foregoing cap, the "Permitted Acquisition Indebtedness Dollar Cap") any time and solely to the extent such Indebtedness was Indebtedness of:

(a) an acquired Person Incurred prior to the date on which such Person became a Restricted Subsidiary as a result of having been acquired and not Incurred in contemplation of such acquisition, or

(b) a Person that was merged, consolidated or amalgamated with or into the Issuer or a Restricted Subsidiary and was not Incurred in contemplation of such merger, consolidation or amalgamation.

provided on the date such Person became a Restricted Subsidiary or the date such Person was merged, consolidated or amalgamated with or into the Issuer or a Restricted Subsidiary, as applicable, if, after giving pro forma effect thereto, the Consolidated Coverage Ratio either (x) equals or exceeds 2.25 to 1.00 or (y) is greater than the Consolidated Coverage Ratio immediately prior to such transaction.

"Permitted Business Investments" means Investments and expenditures in respect of Unproved Reserves made in the ordinary course of, and of a nature that is or shall have become customary in, the Oil and Gas Business as means of actively exploiting, exploring for, acquiring, developing, processing, gathering, marketing or transporting Hydrocarbons through agreements, transactions, interests or arrangements that permit one to share risks or costs, comply with regulatory requirements regarding local ownership or satisfy other objectives customarily achieved through the conduct of the Oil and Gas Business jointly with third parties, including:

(a) ownership interests in Oil and Gas Properties or gathering, transportation, processing, storage or related systems; and

(b) entry into, and Investments and expenditures in the form of or pursuant to, operating agreements, joint venture agreements (including, without limitation, those relating to the Marcellus Midstream Owner), partnership agreements, working interests, royalty interests, mineral leases, processing agreements, Farm-In Agreements, Farm-Out Agreements, contracts for the sale, transportation or exchange of Hydrocarbons, production sharing agreements, development agreements (including without limitation the BG Joint Development Agreement and the Marcellus Joint Development Agreement), area of mutual interest agreements, unitization agreements, pooling arrangements, joint bidding agreements, service contracts and other similar agreements with third parties (including Unrestricted Subsidiaries), excluding, however, Investments in any corporation or publicly traded partnership or limited liability company.

"Permitted Investment" means:

(a) Investments by (i) the Issuer in any Guarantor, by any Guarantor in another Guarantor, by any Guarantor in the Issuer or by the Issuer or any Guarantor in a Person that will, together with all of such Person's Subsidiaries, upon the making of such Investment, become a Guarantor (other than any of such Person's Subsidiaries that are designated as Unrestricted Subsidiaries in accordance with the terms of this Indenture), (ii) by a Non-Guarantor Restricted Subsidiary in another Non-Guarantor Restricted Subsidiary, (iii) by a Non-Guarantor Restricted Subsidiary in the Issuer or any Guarantor, and (iv) by the Issuer or any Guarantor in a Non-Guarantor Restricted Subsidiary in an aggregate amount, together with all other Investments made pursuant to this clause (a)(iv) since the Issue Date, not in excess of $25,000,000; provided, that to the extent constituting Indebtedness, any such Investment under this clause (a) shall be made in accordance with Section 4.09(b)(4);

(b) Investments in another Person (1) if, as a result of such Investment, such other Person is merged or consolidated with or into, or transfers or conveys all or substantially all its assets to, the Issuer or any Guarantor (and so long as (A) the Issuer or such Guarantor is the survivor of any such merger or consolidation and (B) in connection with any such Investment all of such Person's Subsidiaries, upon the making of such Investment, will become a Guarantor (other than any of such Person's Subsidiaries that are designated as Unrestricted Subsidiaries in accordance with the terms of this Indenture)) or (2) for consideration consisting solely of Capital Stock of the Issuer; provided, that, in both cases, such Person's primary business is a Related Business and provided, further, the aggregate amount of all such Investments shall not exceed $25,000,000 during the term of the Notes;

(c) Investments in cash and Temporary Cash Investments;

(d) receivables owing to the Issuer or any Restricted Subsidiary if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided, however, that such trade terms may include such concessionary trade terms as the Issuer or any such Restricted Subsidiary deems reasonable under the circumstances;

(e) payroll, commission, travel, relocation and similar advances to officers, directors and employees to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(f) loans or advances to employees made in the ordinary course of business consistent with past practices of the Issuer or such Restricted Subsidiary but in any event not to exceed $2,500,000 in the aggregate outstanding at any one time;

(g) stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Issuer or any Restricted Subsidiary or in satisfaction of judgments;

(h) Investments in any Person to the extent such Investment represents the non-cash portion of the consideration received for (1) an Asset Sale as permitted pursuant to Section 4.10 or (2) a disposition of assets not constituting an Asset Sale;

(i) Investments in any Person where such Investment was acquired by the Issuer or any of the Restricted Subsidiaries (1) in exchange for any other Investment or accounts receivable held by the Issuer or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable or (2) as a result of a foreclosure by the Issuer or any of the Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(j) Investments in any Person to the extent such Investments consist of prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits made in the ordinary course of business by the Issuer or any Restricted Subsidiary;

(k) Investments in any Person to the extent such Investments consist of Hedging Obligations otherwise permitted under Section 4.09;

(l) Investments in any Person to the extent such Investment (1) exists on the Issue Date or (2) is an extension, modification or renewal of any such Investments described under the immediately preceding clause (1) but only to the extent not involving additional advances, contributions or other Investments of cash or other assets or other increases thereof (other than as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities, in each case, pursuant to the terms of such Investment as in effect on the Issue Date);

(m) Permitted Business Investments;

(n) Guarantees issued in accordance with Sections 4.09 and 4.15;

(o) Guarantees of performance or other obligations (other than Indebtedness) arising in the ordinary course in the Oil and Gas Business, including obligations under oil and natural gas exploration, development, joint operating and related agreements and licenses or concessions related to the Oil and Gas Business;

(p) any Investment consisting of purchases and acquisitions of inventory, supplies, material and equipment, purchases of contract rights or licenses or leases of intellectual property, in each case, in the ordinary course of business; and

(q) other Investments in any Person having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (q) since the Issue Date, do not exceed $50,000,000.

With respect to any Permitted Investment, at the time such Permitted Investment is made, the Issuer will be entitled to divide and classify such Investment in more than one of the clauses of the definition of "Permitted Investment."

"Permitted Investors" means (a) ESAS, (b) C. John Wilder and any Affiliate of C. John Wilder, (c) any spouse or lineal descendants (whether natural or adopted) of C. John Wilder and any trust solely for the benefit of C. John Wilder and/or his spouse and/or lineal descendants, (d) Fairfax, (e) any Holder or lender under the 1.75 Lien Credit Agreement and (f) any person (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) with respect to which Persons described in clauses (a), (b), (c), (d) and (e) of this definition own the majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Issuer that is owned by such group.

"Permitted Liens" means, with respect to any Person:

(a) Senior Priority Liens securing Senior Priority Lien Debt (i) under Credit Facilities Incurred under Section 4.09(b)(1) and Senior Priority Liens securing Cash Management Obligations constituting Senior Priority Lien Obligations, in each case to the extent subject to the Intercreditor Agreement and in an aggregate amount at any time outstanding (when added to the amount of all other outstanding Senior Priority Lien Obligations) not exceeding the Senior Priority Lien Cap and (ii) under Hedging Obligations constituting Senior Priority Lien Debt;

(b) Liens securing the Notes and any PIK Notes in respect thereof and the Guarantees thereof and (y) to the extent subject to the Intercreditor Agreement, Priority Liens securing other Priority Lien Debt Incurred under Section 4.09.(b)(i)(2);

(c) Junior Priority Liens securing the 1.75 Lien Credit Agreement and any increase in the principal amount as a result of a PIK payment in respect thereof and to the extent subject to the Intercreditor Agreement, Junior Priority Liens securing other Junior Priority Debt Incurred under Section 4.09(b)(3)(x) and (y) Junior Liens securing the Second Lien Credit Agreement and to the extent subject to the Intercreditor Agreement, Junior Liens securing other Junior Debt Incurred, in each case, under Section 4.09(b)(3)(y) or (z);

(d) pledges or deposits by such Person under workers' compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or United States government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case incurred in the ordinary course of business;

(e) Liens imposed by law, such as carriers', warehousemen's and mechanics' Liens, in each case for sums not yet due or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review and Liens arising solely by virtue of any statutory or common law provision relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution; provided, however, that (1) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by the Issuer in excess of those set forth by regulations promulgated by the Federal Reserve Board and (2) such deposit account is not intended by the Issuer or any Restricted Subsidiary to provide collateral to the depository institution;

(f) Liens for taxes not yet subject to penalties for non-payment or which are being contested in good faith by appropriate proceedings;

(g) Liens in favor of issuers of performance, bid or surety bonds, completion guarantees or letters of credit issued pursuant to the request of and for the account of such Person in the ordinary course of its business; provided, however, that such performance, bid or surety bonds, completion guarantees or letters of credit do not constitute, or secure, any Indebtedness in an aggregate amount in excess of $10,000,000 (in addition to and not in limitation of any letters of credit which may be issued pursuant to Credit Facilities permitted under clause (a) above);

(h) survey exceptions, encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not Incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(i) Liens securing Indebtedness Incurred to finance the construction, purchase or lease of, or repairs, improvements or additions to, property, plant or equipment of such Person; provided, however, that the Lien may not extend to any other property owned by such Person or of any other property of the Issuer or any of its Restricted Subsidiaries (whether at the time the Lien is Incurred or otherwise) (other than assets and property affixed or appurtenant thereto), and the Indebtedness (other than any interest thereon) secured by the Lien may not be Incurred more than one-hundred eighty (180) days after the later of the acquisition, completion of construction, repair, improvement, addition or commencement of full operation of the property subject to the Lien; provided, further, that after giving effect to the Incurrence of the Indebtedness secured by such Lien, the Collateral Coverage Ratio is equal to or greater than 1.5 to 1.0;

(j) Liens securing Non-Recourse Purchase Money Indebtedness granted in connection with the acquisition by the Issuer or any Restricted Subsidiary in the ordinary course of business of fixed assets used in the Oil and Gas Business (including the office buildings and other real property used by the Issuer or such Restricted Subsidiary in conducting its operations); provided that (1) such Liens attach only to the fixed assets acquired with the proceeds of such Non-Recourse Purchase Money Indebtedness and (2) such Non-Recourse Purchase Money Indebtedness is not in excess of the purchase price of such fixed assets; provided, further, that after giving effect to the Incurrence of the Indebtedness or other obligations secured by such Lien, the Collateral Coverage Ratio is equal to or greater than 1.5 to 1.0;

(k) Liens existing on the Issue Date other than as described under clause (a), (b) and (c) of this definition;

(l) Liens on property or shares of Capital Stock of another Person at the time such other Person becomes a Subsidiary of such Person (and not incurred in anticipation of or in connection with such transaction); provided, however, that the Liens may not extend to any other property owned by such Person or any of its Restricted Subsidiaries (other than assets and property affixed or appurtenant thereto); provided, further, that at the time such Person becomes a Subsidiary, the Collateral Coverage Ratio is equal to or greater than 1.5 to 1.0;

(m) Liens on property at the time such Person or any of its Subsidiaries acquires the property, including any acquisition by means of a merger or consolidation with or into such Person or a Subsidiary of such Person (and not Incurred in anticipation of or in connection with such transaction); provided, however, that the Liens may not extend to any other property owned by such Person or any other property of the Issuer or any of its Restricted Subsidiaries (other than assets and property affixed or appurtenant thereto; provided, further, that at the time of such acquisition, the Collateral Coverage Ratio is equal to or greater than 1.5 to 1.0;

(n) (x) Liens securing Indebtedness or other obligations of the Issuer or any Guarantor owing to the Issuer or any Guarantor (provided that such Liens and Indebtedness and other obligations are subject to a subordinated intercompany note), (y) Liens on the property of any Subsidiary of the Issuer securing Indebtedness or other obligations of any Subsidiary of the Issuer owing to the Issuer or any Guarantor of the Issuer (provided that such Liens and Indebtedness and other obligations are subject to a subordinated intercompany note) and (z) Liens on the property of any Subsidiary of the Issuer that is not a Guarantor securing Indebtedness or other obligations of any Subsidiary of the Issuer that is not a Guarantor owing to the Issuer or any Subsidiary of the Issuer;

(o) Liens on, or related to, assets to secure all or part of the costs (not constituting Indebtedness for borrowed money) Incurred in the ordinary course of a Related Business for the surveying, exploration, drilling, extraction, development, operation, production, construction, alteration, repair, improvement, processing, transportation, marketing, storage or operation thereof;

(p) Liens on pipeline or pipeline facilities that arise under operation of law;

(q) Liens arising in the ordinary course of business under operating agreements, joint venture agreements, partnership agreements, oil, natural gas, other hydrocarbon and mineral leases, Farm-Out Agreements or Farm-In Agreements, division orders, contracts for the sale, transportation or exchange of oil or natural gas, unitization and pooling declarations and agreements, area of mutual interest agreements, overriding royalty agreements, net profits agreements, production payment agreements, royalty trust agreements, incentive compensation programs on terms that are reasonably customary in the Oil and Gas Business for geologists, geophysicists and other providers of technical services to the Issuer or a Restricted Subsidiary, master limited partnership agreements, development agreements, operating agreements, production sales contracts, gas balancing or deferred production agreements, injection, re-pressuring and recycling agreements, salt water or other disposal agreements, seismic or geophysical permits or agreements, and other agreements that are customary in the Oil and Gas

Business; provided, however, that in all instances such Liens are limited to the assets that are the subject of the relevant agreement, program, order or contract; provided, further, that such Liens do not secure any Indebtedness for borrowed money (other than an aggregate principal amount not in excess of $5,000,000 at any time outstanding);

(r) Liens reserved in oil, natural gas, other hydrocarbon and mineral leases for bonus or rental payments and for compliance with the terms of such leases;

(s) Liens to secure any Refinancing (or successive Refinancings) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clause (i), (k), (l) or (m); provided, however, that (1) such new Lien shall be limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus improvements and accessions to such property or proceeds or distributions thereof) and (2) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clause (i), (k), (l) or (m) above at the time the original Lien became a Permitted Lien and (B) an amount necessary to pay any fees and expenses, including premiums, related to such Refinancing.

(t) judgment liens in respect of judgments that do not constitute an Event of Default under Section 5.01(i) (but excluding judgments in respect of debt for borrowed money);

(u) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Issuer and its Restricted Subsidiaries in the ordinary course of business;

(v) Liens on the Marcellus JV Oil and Gas Assets securing the obligations of the Issuer and certain Restricted Subsidiaries under the Marcellus JV Documents and Liens securing the obligations of the Issuer and certain Restricted Subsidiaries under the BG JV Documents;

(w) leases, licenses, subleases and sublicenses of real property and intellectual property rights that do not materially interfere with the ordinary conduct of the business of the Issuer or any of its Restricted Subsidiaries, taken as whole; and

(x) preferential rights to purchase, and provisions requiring a third party's consent prior to assignment and similar restraints on alienation, in each case, granted pursuant to an oil and gas operating agreement and arising in the ordinary course of business or incident to the exploration, development, operation and maintenance of Oil and Gas Properties; provided such right, requirement or restraint does not materially affect the value of such Oil and Gas Properties;

provided that in each case set forth above, notwithstanding any stated limitation on the assets that may be subject to such Lien, a Permitted Lien on a specified asset or group or type of assets may include Liens on all improvements, additions and accessions thereto and all products and proceeds thereof; provided, further, that for purposes of this definition, the term "Indebtedness" shall be deemed to include interest on such Indebtedness.

"Permitted Marketing Obligations" means Indebtedness of the Issuer or any Restricted Subsidiary under letter of credit or borrowed money obligations or, in lieu of or in addition to such letters of credit or borrowed money, Guarantees of such Indebtedness or other obligations of the Issuer or any Restricted Subsidiary by any other Restricted Subsidiary, in each case, related to the purchase by the Issuer or any Restricted Subsidiary of Hydrocarbons for which the Issuer or such Restricted Subsidiary has contracts to

sell; provided, however, that in the event that such Indebtedness or obligations are guaranteed by the Issuer or any Restricted Subsidiary, then either: (a) the Person with which the Issuer or such Restricted Subsidiary has contracts to sell has an Investment Grade Rating or, in lieu thereof, a Person guaranteeing the payment of such obligated Person has an Investment Grade Rating or (b) such Person posts, or has posted for it, a letter of credit (issued by a Person that has an Investment Grade Rating and is not an Affiliate of the Issuer) in favor of the Issuer or such Restricted Subsidiary with respect to all such Person's obligations to the Issuer or such Restricted Subsidiary under such contracts.

"Permitted Prior Liens" means Liens Incurred pursuant to clauses (d), (e), (f), (g), (h), (j), (p) and (q) of the definition of "Permitted Liens".

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means 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 any the Issuer, any Guarantor 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" means a Pledge and Security Agreement in favor of the Collateral Trustee for the benefit of the Secured Parties and the other holders of Priority Lien Obligations covering, among other things, the rights and interests of the Issuer or any Restricted Subsidiary in the Equity Interest of each Restricted Subsidiary and of each Affiliate that is an operator of any Oil and Gas Properties (other than the Equity Interests of the Issuer).

"Preferred Stock," as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

"Priority Lien" means a Lien junior in priority to the Senior Priority Liens and senior in priority to the Junior Priority Liens and Junior Liens granted by the Issuer or any Guarantor in favor of the Collateral Trustee pursuant to a Priority Lien Document at any time, upon any Property of the Issuer or any Guarantor to secure Priority Lien Obligations (including Liens on such Collateral under the security documents associated with any Replacement Credit Facility).

"Priority Lien Debt" means (a) the Notes and other Obligations; and (b) any other Indebtedness (other than intercompany Indebtedness owing to the Issuer or its Subsidiaries) of the Issuer or any Guarantor permitted to be Incurred under Section 4.09(b)(2) (including Refinancing Indebtedness with respect to Priority Lien Debt with other Priority Lien Debt to the extent contemplated and permitted by the Intercreditor Agreement) that is secured equally and ratably with the Obligations by a Priority Lien and that is permitted to be Incurred and so secured under each applicable Secured Debt Document; provided that, in the case of any Indebtedness referred to in clause (b) of this definition:

(1) (i) such Indebtedness does not mature and does not have any mandatory or scheduled payments or sinking fund obligations on or prior to ninety-one (91) days after the Stated Maturity of the Notes (except as a result of a customary change of control or asset sale repurchase offer provisions) and (ii) the principal amount of such Indebtedness does not exceed the principal amount of, plus any accrued and unpaid interest on, the Priority Lien Obligations being refinanced or exchanged;

(2) on or before the date on which such Indebtedness is Incurred by the Issuer or any Guarantor, such Indebtedness is designated by the Issuer in an Officers' Certificate delivered to each Priority Lien Representative and the Collateral Trustee, as "Priority Lien Debt," and such Officers' Certificate also certifies that such Indebtedness is permitted and with respect to any other requirements set forth in the Intercreditor Agreement;

(3) a Priority Lien Representative is designated with respect to such Indebtedness and executes and delivers an Additional Secured Debt Designation on behalf of itself and all holders of such Indebtedness;

(4) all relevant filings and recordations necessary to ensure that such Indebtedness is secured by the Collateral in accordance with the applicable Priority Lien Security Documents are authorized, executed (if applicable) and recorded in each appropriate jurisdiction (provided that this clause (4) may be satisfied on a post-closing basis if permitted by the Priority Lien Representative with respect to such Indebtedness); and

(5) requirements set forth in the Intercreditor Agreement as to the confirmation, grant or perfection of the Collateral Trustee's Liens to secure such Indebtedness or Obligations in respect thereof are satisfied (and the satisfaction of such requirements and the other provisions of this clause (5) will be conclusively established if the Issuer delivers to the Collateral Trustee an Officers' Certificate stating that such requirements and other provisions have been satisfied and that such Indebtedness is "Priority Lien Debt");

provided that all such Indebtedness (other than any DIP Financing that is permitted by the Intercreditor Agreement) shall be pari passu in right of payment, it being understood that there may be different tranches of Priority Lien Debt with different maturities and amortization profiles, but the principal amount of Indebtedness under all such tranches must in all other respects be pari passu in right of payment. Any such Indebtedness (other than any such DIP Financing) that is not consistent with the foregoing condition for pari passu treatment in right of payment with the Notes under the Priority Lien Documents shall not constitute Priority Lien Debt.

"Priority Lien Documents" means, collectively, the Note Documents and any additional indenture, supplemental indenture, credit agreement or other agreement governing each other Series of Priority Lien Debt and the Priority Lien Security Documents (other than any Priority Lien Security Documents that do not secure Priority Lien Obligations).

"Priority Lien Obligations" means Priority Lien Debt and all other principal (including reimbursement obligations), interest (including, to the extent legally permitted, all interest accrued thereon after the commencement of any insolvency or liquidation proceeding at the rate, including any applicable post-default rate even if such interest is not enforceable, allowable or allowed as a claim in such proceeding), premium (if any), fees, indemnifications, reimbursements, expenses, and other liabilities in respect thereof.

"Priority Lien Representative" means (a) in the case of the Notes, the Trustee and (b) in the case of any other Series of Priority Lien Debt, the trustee, agent or representative of the holders of such Series of Priority Lien Debt who (1) is appointed as a Priority Lien Representative (for purposes related to the administration of the Priority Lien Security Documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Priority Lien Debt, together with its successors in such capacity, and (2) has become a party to the Intercreditor Agreement by executing and delivering an Additional Secured Debt Designation.

"Priority Lien Security Documents" means the Intercreditor Agreement, the Pledge Agreement, the Security Agreement and all security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements or other grants or transfers for security executed and delivered by the Issuer or any Guarantor creating (or purporting to create) a Priority Lien upon Collateral in favor of the Collateral Trustee, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms.

"Private Placement Legend" means the legend set forth in Section 2.06(b)(i) hereof to be placed on all Notes issued under this Indenture, except where otherwise permitted by the provisions of this Indenture.

"Production Payments" means Dollar-Denominated Production Payments and Volumetric Production Payments, collectively.

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

"Proved Reserves" means those Oil and Gas Properties designated as proved (in accordance with SEC rules and regulations) in the Reserve Report most recently delivered to the Trustee pursuant to Section 4.03.

"PV-10" means, as of any date of determination, the present value of future cash flows from the Proved Reserves and Unproved Reserves included in the Oil and Gas Properties, as set forth in the most recent Collateral Coverage Reserve Report delivered pursuant to Section 4.23 or a more a recent Collateral Coverage Reserve Report, utilizing a 10% discount rate and using NYMEX Prices.

"QIB" means a "qualified institutional buyer" as defined in Rule 144A.

"Rating Agency" means each of S&P and Moody's or if S&P or Moody's or both shall not make a rating on the applicable obligations publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Issuer (as certified by a resolution of the Governing Body of the Issuer) which shall be substituted for S&P or Moody's or both, as the case may be.

"RBL Agent" means, at any time, the Person serving at such time as the "Agent" or "Administrative Agent" under the First Lien RBL Credit Agreement or any other representative then most recently designated in accordance with the applicable provisions of the First Lien RBL Credit Agreement, together with its successors in such capacity.

"Record Date" for the interest, if any, payable on any applicable Interest Payment Date means February 20 or August 20 (whether or not a Business Day) next preceding such Interest Payment Date.

"Refinance" means, in respect of any Indebtedness, to refinance, extend, renew, refund, replace, repay, prepay, purchase, redeem, defease or retire, or to issue other Indebtedness in exchange or replacement for, such Indebtedness. "Refinanced" and "Refinancing" shall have correlative meanings.

"Refinancing Indebtedness" means (a) Indebtedness Incurred by the Issuer or any Restricted Subsidiary, (b) Disqualified Stock issued by the Issuer or any Restricted Subsidiary or (c) Preferred Stock issued by any Restricted Subsidiary, which, in each case, serves to extend, replace, refund, refinance,

renew or defease any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, including Refinancing Indebtedness, so long as:

(1) the principal amount (or accreted value, if applicable) of such new Indebtedness, the amount of such new Preferred Stock or the liquidation preference of such new Disqualified Stock does not exceed (i) the principal amount of (or accreted value, if applicable), plus any accrued and unpaid PIK or cash interest on, the Indebtedness, the amount of, plus any accrued and unpaid dividends on, the Preferred Stock, or the liquidation preference of, plus any accrued and unpaid dividends on, the Disqualified Stock, as the case may be, being so extended, replaced, refunded, refinanced, renewed or defeased (such Indebtedness or Disqualified Stock or Preferred Stock, the "Applicable Refinanced Debt"), plus (ii) an amount equal to the sum of (A) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Applicable Refinanced Debt and (B) any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such Applicable Refinanced Debt;

(2) such Refinancing Indebtedness has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is Incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being extended, replaced, refunded, refinanced, renewed or defeased;

(3) such Refinancing Indebtedness has a final scheduled maturity date equal to or later than the earlier of (A) the final scheduled maturity date of the Indebtedness, Preferred Stock or Disqualified Stock being so extended, replaced, refunded, refinanced, renewed or defeased and (B) the date that is ninety-one (91) days after the latest Stated Maturity date of the Notes;

(4) to the extent such Refinancing Indebtedness extends, replaces, refunds, refinances, renews or defeases (a) Subordinated Indebtedness, such Refinancing Indebtedness is subordinated to the obligations at least to the same extent as the Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, (b) the Existing Unsecured Notes, such Refinancing Indebtedness shall, if secured, constitute Junior Priority Lien Debt or Junior Lien Debt (subject, in each case to the Intercreditor Agreement) or, if initially unsecured, shall be unsecured at all times and, in each case, no Subsidiary of the Issuer (other than a Guarantor) shall, directly or indirectly, be an obligor (whether a borrower or otherwise), guarantor or surety under, or for, such Refinancing Indebtedness and shall not provide any Guarantee of any such Refinancing Indebtedness or (c) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively; and

(5) to the extent such Refinancing Indebtedness extends, replaces, refunds, refinances, renews or defeases the Existing Unsecured Notes, Senior Priority Lien Debt, Priority Lien Debt, Junior Priority Lien Debt or Junior Lien Debt, the covenants (affirmative and negative), default and event of default provisions, interest rate (including interest rate floor and default rate), repayment, prepayment, repurchase and/or sinking fund provisions, reporting provisions, and other material provisions of such Refinancing Indebtedness shall be no more favorable to the creditors thereunder, or more burdensome to the debtors or guarantors thereunder, than the correlative and/or corresponding provisions under the Note Documents (provided, further, that, in all events, for the avoidance of doubt, such Refinancing Indebtedness shall not contain any financial maintenance covenants not otherwise contained in the Indebtedness being refinanced).

Notwithstanding the foregoing, Refinancing Indebtedness shall not include:

(1) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Issuer that is not a Guarantor that refinances Indebtedness or Disqualified Stock of the Issuer;

(2) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Issuer that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(3) Indebtedness or Disqualified Stock of the Issuer or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary.

In addition, with respect to any Refinancing Indebtedness of Refinancing Indebtedness, all limitations, restrictions, qualifying criteria and other standards set forth in this definition shall equally apply.

"Registration Rights Agreement" means the registration rights agreement, dated as of the Issue Date, among the Issuer and the holders of the Issuer's common stock.

"Regulation S" means Regulation S promulgated under the Securities Act.

"Related Business" means any Oil and Gas Business and any other business in which the Issuer or any of the Restricted Subsidiaries was engaged on the Issue Date and any business related, ancillary or complementary to such business.

"Replacement Credit Facility" means any Credit Facility that refunds, refinances or replaces the First Lien RBL Credit Agreement or any other Replacement Credit Facility, in each case, in whole and with all commitments thereunder terminated; provided that (i) the terms and conditions of, and documentation for, any such Credit Facility are reasonably satisfactory to the Requisite Lead Holders, (ii) the total yield, covenants and defaults and events of default specified in such Credit Facility are the same in all material respects as the First Lien RBL Credit Agreement, (iii) such Credit Facility does not provide for the incurrence of incremental facilities or incremental indebtedness (or incremental equivalent facilities or indebtedness) (or analogous extensions of credit), (iv) such Credit Facility contains no prepayment penalties or premiums (other than customary breakage for LIBOR interest periods) or contain any make-whole, or any other provision similar to the foregoing in this clause (iv) and (v) such Credit Facility does not change the waterfall provisions or similar order of payment provisions from those provisions set forth in the First Lien RBL Credit Agreement or create or otherwise establish layers of Indebtedness or other subordinated tranches (or sub-tranches) of Indebtedness.

"Requisite Lead Holders" means on any date of determination, with respect to only those Lead Holders who, respectively, are Holders, such Lead Holders which constitute at least a majority in aggregate principal amount of the then-outstanding Notes held by all such Lead Holders on such date of determination.

"Requisite Shareholder Approvals" means the Issuer's receipt of the requisite votes or consents of the holders of its shares of Common Stock, (1) to the issuances of Common Stock represented by the Warrants, the PIK Shares and the PIK payments under the 1.75 Lien Credit Agreement for purposes of the rules of the New York Stock Exchange (the "NYSE Approval") to the extent the Common Stock remains listed on the New York Stock Exchange and such approval is required for the issuances of the Warrants, the PIK Shares and the PIK payments under the 1.75 Lien Credit Agreement and (2) with

respect to the amendment of the Issuer's existing charter to (a) increase its authorized Common Stock or (b) effect a reverse stock split, in each case under applicable Texas law (the "Charter Amendment Approval"); provided, that the Issuer may waive, in its sole discretion, the Charter Amendment Approval.

"Requisite Shareholder Approval Deadline" means September 30, 2017; provided that if the proxy statement relating to the special meeting of the shareholders called for purposes of obtaining the Requisite Shareholder Approvals is selected for review by the SEC, the Requisite Shareholder Approval Deadline shall mean November 30, 2017.

"Resale Registration Statement" mean a registration statement filed with the SEC pursuant to Rule 415 under the Securities Act on Form S-3 under the Securities Act (or in the event that the Issuer is ineligible to use such form, such other form as the Issuer is eligible to use under the Securities Act provided that such other form shall be converted into a Form S-3 promptly after Form S-3 becomes available to the Issuer) covering resales by the Holders as selling shareholders (not underwriters) of any PIK Shares received as payment of interest on the Notes.

"Reserve Report" means a report setting forth, as of the end of the Issuer's most recent fiscal year, the Proved Reserves attributable to the Oil and Gas Properties of the Issuer and the Restricted Subsidiaries, together with a projection of the rate of production and future net income taxes, operating expenses and capital expenditures with respect thereto as of such date, based upon the pricing assumptions consistent with SEC reporting requirements at the time.

"Responsible Officer" means the chief executive officer, president, vice president, chief financial officer, principal accounting officer, treasurer or assistant treasurer of the Issuer or a Guarantor, as applicable. Any document delivered hereunder that is signed by a Responsible Officer of the Issuer or a Guarantor shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of the Issuer or such Guarantor, as applicable, and such Responsible Officer shall be conclusively presumed to have acted on behalf of the Issuer or such Guarantor, as applicable.

"Restricted Definitive Note" means a Definitive Note bearing the Private Placement Legend.

"Restricted Payment" means:

(a) the declaration or payment of any dividends or any other distributions of any sort in respect of the Issuer's or any Restricted Subsidiary's Equity Interests (including any payment in connection with any merger or consolidation involving such Person) or similar payment to the direct or indirect holders of the Issuer's or any Restricted Subsidiary's Equity Interests (other than (1) dividends made or distributions payable solely in the Issuer's Equity Interests (other than Disqualified Stock), (2) dividends made or distributions payable solely to the Issuer or (to the extent made to all equity-holders on a pro rata basis) a Restricted Subsidiary and (3) pro rata dividends or other distributions made by a Restricted Subsidiary of the Issuer to the holders of its common Equity Interests on a pro rata basis);

(b) the purchase, redemption or other acquisition or retirement for value of any Equity Interest of (1) the Issuer or (2) a Restricted Subsidiary held by any Affiliate of the Issuer (other than by a Restricted Subsidiary), including in connection with any merger or consolidation and including the exercise of any option to exchange any Equity Interest (other than into Equity Interests of the Issuer that are not Disqualified Stock);

(c) the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment of any Subordinated Indebtedness of the Issuer or any Guarantor or any Existing Unsecured Notes, Junior Priority Lien Debt, Junior Lien Debt or Senior Debt (other than, except with respect to the Existing Unsecured Notes (1) from the Issuer or a Guarantor or (2) in anticipation of satisfying a sinking fund obligation, principal installment or payment due at final maturity, in each case due within one year of the date of such purchase, repurchase, redemption, defeasance or other acquisition); or

(d) the making of any Investment (other than a Permitted Investment) in any Person.

"Restricted Subsidiary" means any Subsidiary of the Issuer that is not an Unrestricted Subsidiary.

"Rule 144" means Rule 144 promulgated under the Securities Act.

"Rule 144A" means Rule 144A promulgated under the Securities Act.

"Rule 903" means Rule 903 promulgated under the Securities Act.

"Rule 904" means Rule 904 promulgated under the Securities Act.

"S&P" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

"Sale/Leaseback Transaction" means an arrangement relating to Property owned by the Issuer or a Restricted Subsidiary on the Issue Date or thereafter acquired by the Issuer or a Restricted Subsidiary whereby the Issuer or a Restricted Subsidiary transfers such Property to a Person and the Issuer or a Restricted Subsidiary leases it from such Person.

"SEC" means the U.S. Securities and Exchange Commission.

"Second Lien Credit Agreement" means that certain Term Loan Credit Agreement dated as of October 19, 2015 among the Issuer, the lenders party thereto and Wilmington Trust, National Association, as administrative agent, as the same was amended, supplemented, modified, restated, refinanced or replaced on or prior to the Issue Date and as may be amended, supplemented, modified, restated, refinanced or replaced from time to time after the Issue Date in accordance with the Intercreditor Agreement and with the same and/or different lenders and/or agents in accordance with the Intercreditor Agreement; provided that any increase in the principal amount of the Loans or Letters of Credit (each as defined in the each of the Second Lien Credit Agreement) together with any other borrowings or other extensions of credit thereunder is permitted solely under Section 4.09(b)(3).

"Secured Debt Documents" means the Senior Priority Lien Documents, the Priority Lien Documents, the Junior Priority Lien Documents and the Junior Lien Documents.

"Secured Indebtedness" means, as of any date, any Indebtedness for borrowed money secured as (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured as) Senior Priority Lien Debt or Priority Lien Debt (or any Replacement Credit Facility) or any other Indebtedness for borrowed money which is secured by a Lien which is not expressly subordinated to the Notes and the obligations in respect of the Senior Priority Lien Debt.

"Secured Party" means the Collateral Trustee, the Trustee, any Holder and any other holder of Obligations.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Security Agreement" means a Security Agreement in favor of the Collateral Trustee for the benefit of the Secured Parties and the other holders of Priority Lien Obligations covering, among other things, the rights and interests of Issuer or any Restricted Subsidiary in the property of such Restricted Subsidiary.

"Security Instruments" means collectively, the Collateral Trust Agreement, all Collateral Trust Joinder Agreements, the Pledge Agreement, the Security Agreement, the Deposit Account Control Agreements, all Guarantees of the Obligations evidenced by the Note Documents and all mortgages, security agreements, pledge agreements, collateral assignments and other collateral documents covering the Oil and Gas Properties of the Issuer and the Restricted Subsidiaries and the Equity Interests of the Restricted Subsidiaries and other personal property, equipment, oil and gas inventory and proceeds of the foregoing.

"Senior Debt" means unsecured Indebtedness of the Issuer or any of its Restricted Subsidiaries permitted to be Incurred under the terms of this Indenture, unless the instrument under which such Indebtedness is Incurred expressly provides that it is subordinated in right of payment to the Notes and all Obligations with respect to the foregoing. Notwithstanding anything to the contrary in the preceding sentence, Senior Debt will not include:

(a) any intercompany Indebtedness between or among the Issuer or any of its Subsidiaries or any of its Affiliates; or

(b) any trade payables or taxes owed or owing by the Issuer or any of its Subsidiaries.

"Senior Priority Lien" means a Lien granted by the Issuer or any Guarantor in favor of the Senior Priority Lien Collateral Agent at any time, upon any Property of the Issuer or any Guarantor to secure Senior Priority Lien Obligations (including Liens on such Collateral under the security documents associated with any Replacement Credit Facility).

"Senior Priority Lien Cap" means $200,000,000.

"Senior Priority Lien Collateral Agent" means the RBL Agent (or other Person designated by the RBL Agent), or if the First Lien RBL Credit Agreement ceases to exist, the collateral agent or other representative of lenders or holders of Senior Priority Lien Obligations designated pursuant to the terms of the Senior Priority Lien Documents and the Intercreditor Agreement.

"Senior Priority Lien Debt" means (1) Indebtedness of the Issuer and the Guarantors under the First Lien RBL Credit Agreement (including letters of credit (with outstanding letters of credit being deemed to have a principal amount equal to the stated amount thereof) and reimbursement obligations with respect thereto) or any Replacement Credit Facility, in each case, that is subject to the Intercreditor

Agreement and permitted to be Incurred under Section 4.09(b)(1) and secured under each applicable Secured Debt Document; provided, in the case of Indebtedness under any Replacement Credit Facility, that:

(a) on or before the date on which such Indebtedness is Incurred under such Replacement Credit Facility, such Indebtedness is designated by the Issuer, in an Officers' Certificate delivered to the Senior Priority Lien Collateral Agent and the Collateral Trustee, as "Senior Priority Lien Debt" for the purposes of the Secured Debt Documents; provided that if such Indebtedness is designated as "Senior Priority Lien Debt," it cannot also be designated as Priority Lien Debt, Junior Priority Lien Debt or Junior Lien Debt (or any combination of the three);

(b) the collateral agent or other representative with respect to such Indebtedness, the Senior Priority Lien Collateral Agent, the Collateral Trustee, the Issuer and each applicable Guarantor have duly executed and delivered the Intercreditor Agreement (or a joinder to the Intercreditor Agreement or a new Intercreditor Agreement substantially similar to the Intercreditor Agreement as in effect on the Issue Date and in a form reasonably acceptable to each of the parties thereto);

(c) the aggregate outstanding amount of the Senior Priority Lien Obligations, after giving effect to such Replacement Credit Facility, shall not exceed the Senior Priority Lien Cap; and

(d) all other requirements set forth in the Intercreditor Agreement as to the confirmation, grant or perfection of the Senior Priority Lien Collateral Agent's Liens to secure such Indebtedness or obligations in respect thereof are satisfied;

(2) Cash Management Obligations permitted to be secured by Priority Liens pursuant to clause (a) of the definition of "Permitted Liens;" and

(3) Hedging Obligations of the Issuer or any Guarantor to the extent that Eligible Holders representing a majority of the principal amount of Notes held by such Eligible Holders have provided their prior written consent to the Issuer's program pursuant to which such Hedging Obligations were incurred and subject to any limitations (including in amount) contained therein.

For purposes of this definition, all letters of credit will be valued at the face amount thereof, whether or not drawn.

"Senior Priority Lien Documents" means the First Lien RBL Documents, the Replacement Credit Facility and all other loan documents, notes, guarantees, instruments and agreements governing or evidencing, or executed or delivered in connection with, any Replacement Credit Facility.

"Senior Priority Lien Obligations" means (a) the "Obligations" as defined in the First Lien RBL Credit Agreement and (b) all other Senior Priority Lien Debt and principal (including reimbursement obligations and obligations to provide cash collateral with respect to letters of credit whether or not drawn), interest (including, to the extent legally permitted, all interest accrued thereon after the commencement of any insolvency or liquidation proceeding at the rate, including any applicable post-default rate even if such interest is not enforceable, allowable or allowed as a claim in such proceeding), premium (if any), fees, indemnifications, reimbursements, expenses, and other liabilities in respect thereof, including any make-whole payments, together with any Hedging Obligations and Cash Management Obligations, in each case, to the extent that such obligations are secured by Senior Priority Liens. For the avoidance of doubt, Hedging Obligations shall only constitute Senior Priority Lien Obligations to the extent that such Hedging Obligations are secured under the terms of the First Lien RBL Credit Agreement and the security documents creating Senior Priority Liens. Notwithstanding any other provision hereof, the term "Senior Priority Lien Obligations" will include accrued interest, fees and costs

incurred under any Senior Priority Lien Document, whether incurred before or after commencement of an insolvency or liquidation proceeding, and whether or not allowable in an insolvency or liquidation proceeding. To the extent that any payment with respect to the Senior Priority Lien Obligations (whether by or on behalf of any Guarantor, as proceeds of security, enforcement of any right of set-off, or otherwise) is declared to be fraudulent or preferential in any respect, set aside, or required to be paid to a debtor in possession, trustee, receiver, or similar Person, then the obligation or part thereof originally intended to be satisfied will be deemed to be reinstated and outstanding as if such payment had not occurred.

"Senior Priority Lien Representative" means (a) the RBL Agent or (b) in the case of any Replacement Credit Facility, the trustee, agent or representative of the holders of such Senior Priority Lien Debt who maintains the transfer register for such Senior Priority Lien Debt and is appointed as a representative of the Senior Priority Lien Debt (for purposes related to the administration of the security documents related to such Senior Priority Lien Debt) pursuant to the credit agreement or other agreement governing such Senior Priority Lien Debt.

"Series of Junior Lien Debt" means, severally, each issue or series of Junior Lien Debt for which a single transfer register is maintained.

"Series of Junior Priority Lien Debt" means, severally, each issue or series of Junior Priority Lien Debt for which a single transfer register is maintained.

"Series of Priority Lien Debt" means, severally, the Notes, the Guarantees of the Notes and each other issue or series of Priority Lien Debt for which a single transfer register is maintained.

"Series of Secured Debt" means the Senior Priority Lien Debt, each Series of Priority Lien Debt, each series of Junior Priority Lien Debt and each Series of Junior Lien Debt.

"Significant Subsidiary" means any Restricted Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the Issue Date.

"Stated Maturity" means, with respect to any security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency unless such contingency has occurred).

"Subordinated Indebtedness" means (a) with respect to the Issuer, any Indebtedness of the Issuer which is by its terms subordinated in right of payment to the Notes and the other Obligations and (b) with respect to any Guarantor, any Indebtedness of such Guarantor which is by its terms subordinated in right of payment to such Guarantor's guarantee of the Note and other Obligations under the Note Documents.

"Subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, 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, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held, or (b) 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 the context otherwise clearly requires, references herein to a "Subsidiary" refer to a Subsidiary of the Issuer.

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that in no event shall any (a) phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Issuer, any Guarantor or any Restricted Subsidiary or (b) near term spot market purchase and sale of a commodity in the ordinary course of business based on a price determined by a rate quoted on an organized exchange for actual physical delivery, be a Swap Agreement.

"Temporary Cash Investments" means any of the following:

(a) any investment in direct obligations of the United States of America or any agency thereof or obligations guaranteed by the United States of America or any agency thereof;

(b) investments in demand and time deposit accounts, certificates of deposit and money market deposits maturing within 270 days after the date of acquisition thereof issued by a bank or trust company which is organized under the laws of the United States of America, any State thereof or any foreign country recognized by the United States of America, and which bank or trust company has capital, surplus and undivided profits aggregating in excess of $50,000,000 million (or the foreign currency equivalent thereof) and has outstanding debt which is rated "A" (or such similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) or any money-market fund sponsored by a registered broker dealer or mutual fund distributor;

(c) investments in deposits available for withdrawal on demand with any commercial bank that is organized under the laws of any country in which the Issuer or any Restricted Subsidiary maintains an office or is engaged in the Oil and Gas Business; provided, however, that (1) all such deposits have been made in such accounts in the ordinary course of business and (2) such deposits do not at any one time exceed $10,000,000 in the aggregate;

(d) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clause (a) above entered into with a bank meeting the qualifications described in clause (b) above;

(e) investments in commercial paper, maturing not more than ninety (90) days after the date of acquisition, issued by a corporation (other than an Affiliate of the Issuer) organized and in existence under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of "P-1" (or higher) according to Moody's or "A-1" (or higher) according to S&P;

(f) investments in securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least "A" by S&P or "A" by Moody's; and

(g) investments in money market funds that invest 95% or more of their assets in securities of the types described in clauses (a) through (f) above.

"Trading Day" means a day on which the New York Stock Exchange or other exchange or the over-the-counter-market if the Common Stock is not then listed on the New York Stock Exchange, is open for trading.

"Transactions" means (i) the execution, delivery and performance by the Issuer and the Guarantors of this Indenture and the Note Documents and the issuance of the Notes thereunder and the use of proceeds thereof, (ii) the amendment of the First Lien RBL Credit Agreement, the execution of the 1.75 Lien Credit Agreement, the amendment of the Second Lien Credit Agreement and the settlement of certain amounts outstanding under the Second Lien Credit Agreement with the proceeds of the 1.75 Lien Credit Agreement, each, as in effect on the Issue Date and (iii) the grant of Liens by the Issuer and the Guarantors on the Mortgaged Properties and the other Collateral pursuant to the Security Instruments.

"Treasury Rate" means, as of any Redemption Date, the yield to maturity as of such Redemption Date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to the Redemption Date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the Redemption Date to March 20, 2018; provided, however, that if the period from the Redemption Date to March 20, 2018 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

"Trustee" means Wilmington Trust, National Association, as trustee, until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"Trust Officer" means any officer within the corporate trust department of the Trustee with direct responsibility for performing the Trustee's duties under this Indenture and also means, with respect to a particular corporate trust matter, any other officer of the Trustee to whom such matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"Uniform Commercial Code" means the Uniform Commercial Code of the State of New York or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

"Unproved Reserves" means probable reserves and/or possible reserves as defined in Rule 4-10 of Regulation S-X.

"Unrestricted Cash and Cash Equivalents" means, as of any date of determination, that portion of the Issuer's and its Subsidiaries' aggregate cash and Cash Equivalents that (x) would not appear as "restricted" on a consolidated balance sheet of the Issuer, (y) is maintained with a depositary bank in the United States and is subject to perfected Lien in favor of the Collateral Trustee for the benefit of the Secured Parties (as defined in the Intercreditor Agreement) and (z) that is not encumbered by or subject to any Lien (including, without limitation, any Lien permitted hereunder, other than (a) Liens in favor of the Collateral Trustee securing Junior Priority Lien Debt, Priority Lien Debt and Senior Priority Lien Debt, (b) Liens securing Junior Lien Debt and (c) bankers' liens), setoff (other than ordinary course setoff rights of a depository bank arising under a bank depository agreement for customary fees, charges and other account-related expenses due to such depository bank thereunder), counterclaim, recoupment, defense or other right in favor of any Person.

"Unrestricted Definitive Note" means one or more Definitive Notes that do not bear and are not required to bear the Private Placement Legend.

"Unrestricted Subsidiary" means (a) any Subsidiary that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors of the Issuer in the manner provided below, (b) any Subsidiary of an Unrestricted Subsidiary, (c) EBG Resources and any of its Subsidiaries, (d) Bonchasse Land Company, LLC, a Louisiana limited liability company and any of its Subsidiaries, (e) the Marcellus JV Operator and any of its Subsidiaries (f) the Marcellus Midstream Owner and any of its Subsidiaries, and (g) PCMWL, LLC, Moran Minerals, LLC and Moran Land Company, LLC. The Board of Directors of the Issuer may designate any Subsidiary (including any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries at the time of such designation or at any time thereafter (i) is a Material Domestic Subsidiary or owns, directly or indirectly, a Material Domestic Subsidiary, (ii) owns Oil and Gas Properties or owns, directly or indirectly, a Subsidiary that owns Oil and Gas Properties or (iii) guarantees, or is a primary obligor of, any indebtedness, liabilities or other obligations under any Senior Debt (including the Existing Unsecured Notes), Senior Priority Lien Debt, Priority Lien Debt, Junior Priority Lien Debt or Junior Lien Debt (or any Refinancing Indebtedness Incurred to refinance any of the foregoing) or owns, directly or indirectly, a Subsidiary that provides such a guarantee, or is such a primary obligor.

"U.S. Person" means a U.S. person as defined in Rule 902(k) under the Securities Act.

"Volumetric Production Payments" means production payment obligations recorded as deferred revenue in accordance with GAAP, together with all undertakings and obligations in connection therewith.

"Voting Stock" of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

"Warrant Agreement" means that certain agreement with respect to the Warrants dated as of the Issue Date by and among the Issuer and Continental Stock Transfer & Trust Company, as warrant agent, as such agreement may be amended from time to time.

"Warrants" means those warrants issued to the Holders as of the Issue Date to purchase shares of Common Stock of the Issuer.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (1) the amount of each then remaining scheduled installment, sinking fund, serial maturity or other required scheduled payments of principal, including payment at final scheduled maturity, in respect thereof by (2) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (b) the then outstanding principal amount of such Indebtedness; provided that the effects of any prepayments made on such Indebtedness shall be disregarded in making such calculation.

"Wholly-Owned Subsidiary" means a Restricted Subsidiary, all the Capital Stock of which (other than directors' qualifying shares) is owned by the Issuer or one or more other Wholly-Owned Subsidiaries.

"Withdrawal Liability" means 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 1.02. Other Definitions.

Term	Defined in Section
"Affiliate Transaction"	4.11(a)(1)
"Application Period"	4.10(b)
"Asset Sale Offer"	4.10(b)(2)
"Authentication Order"	2.02
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Section 1.03. Rules of Construction.

Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(c) "or" is not exclusive;

(d) words in the singular include the plural, and in the plural include the singular;

(e) "shall" shall be interpreted to express a command;

(f) provisions apply to successive events and transactions;

(g) references to sections of, or rules under, the Securities Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;

(h) unless the context otherwise requires, any reference to an "Article," "Section" or "clause" refers to an Article, Section or clause, as the case may be, of this Indenture;

(i) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision;

(j) the words "asset" and "property" or "Property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights;

(k) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time;

(l) this Indenture shall not be governed by the provisions of the Trust Indenture Act of 1939 and the rules and regulation promulgated thereunder, including any requirements to deliver annual opinions with respect to perfection of security interests or opinions with respect to release of Collateral in accordance with this Indenture, the Collateral Trust Agreement or the Intercreditor Agreement;

(m) unsecured Indebtedness shall not be deemed to be subordinate or junior to secured Indebtedness merely by virtue of its nature as unsecured Indebtedness;

(n) secured Indebtedness shall not be deemed to be subordinate or junior to any other secured Indebtedness merely because it has a junior priority with respect to the same collateral;

(o) the principal amount of any noninterest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP;

(p) the principal amount of any Preferred Stock shall be (A) the maximum liquidation value of such Preferred Stock or (B) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock, whichever is greater; and

(q) all references to the date the Notes were originally issued or the date of this Indenture shall refer to the Issue Date.

Section 1.04. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Issuer. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, shall be sufficient for any purpose of this Indenture and (subject to Section 6.01 hereof) conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section 1.04.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient.

(c) The ownership of Notes shall be proved by the Note Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of any action taken, suffered or omitted by the Trustee or the Issuer in reliance thereon, whether or not notation of such action is made upon such Note.

(e) The Issuer may set a record date for purposes of determining the identity of Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or take any other act, or to vote or consent to any action by vote or consent authorized or permitted to be given or taken by Holders. Unless otherwise specified, if not set by the Issuer prior to the first solicitation of a Holder made by any Person in respect of any such action, or in the case of

any such vote, prior to such vote, any such record date shall be the later of thirty (30) days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished to the Trustee prior to such solicitation.

(f) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Holders of each such different part.

ARTICLE 2

THE NOTES

Section 2.01. Form and Dating; Terms.

(a) General. The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A hereto. The Notes will only be issued as Definitive Notes. The Notes may have notations, legends or endorsements required by law, stock exchange rules or usage. Each Note shall be dated the date of its authentication. The Notes shall be in minimum denominations of $2,000 and integral multiples of $1,000 in excess thereof (or if a PIK Note Payment has been made, the Notes shall be in minimum denominations of $1.00 and any integral multiple of $1.00 in excess thereof).

(b) Terms. The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture on the Issue Date is $300,000,000.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Issuer, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

If the Issuer is permitted to pay PIK Interest in respect of the Notes (upon the terms and conditions set forth in clause (c) below), and the Issuer elects to pay such PIK Interest through the issuance of Notes, the Issuer will issue new Notes (the "PIK Notes"). The Initial Notes and any PIK Notes shall be substantially identical other than the issuance dates, offering price, minimum denominations, transfer restrictions and, if applicable, the date from which interest shall accrue. The payment of interest on the Notes through PIK Note Payments or through the issuance of Common Stock (the "PIK Shares") is herein referred to as "PIK Interest."

The Initial Notes and any PIK Notes will be treated as a single class for all purposes under this Indenture, including, without limitation, waivers, amendments, redemptions and offers to purchase.

(c) Payment and Computation of Interest.

(i) Cash Interest Payments. Except as provided in this Section 2.01(c), interest on the outstanding principal amount of the Notes shall be payable entirely in cash (such interest, "Cash Interest") on the relevant Interest Payment Date.

(ii) PIK Interest Payments. Subject to the restrictions in clause (iii) below, the Issuer may elect, at its option, to pay all or a portion of the interest due on the Notes on the applicable Interest Payment Date by (1) issuing PIK Shares to the Holders (such payments, "PIK Share Payments") or (2) issuing PIK Notes (such payments, "PIK Note Payments") and, in each case, notifying the Trustee of such election pursuant to Section 2.01(c)(viii). The Issuer's ability to elect to pay PIK Interest as PIK Share Payments is subject to the following conditions: (A) the Issuer shall have received the Requisite Shareholder Approvals, (B) the PIK Share Payment shall not result in a beneficial owner of the Notes, such beneficial owner's Affiliates and any person subject to aggregation with such beneficial owner or its Affiliates under Sections 13(d) and 14(d) of the Exchange Act), beneficially owning (as defined in Rules 13d-3 or 13d-5 under the Exchange Act, except that for purposes of this clause (B) such holder shall be deemed to have "beneficial ownership" of all shares that any such holder has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Issuer or any of its direct or indirect parent entities (or their successors by merger, consolidation or purchase of all or substantially all of their assets), (C) the number of PIK Shares to be issued shall not be in excess of the authorized amount of Common Stock available under the Issuer's charter therefor, (D) the PIK Shares shall be (x) listed on the New York Stock Exchange or any other exchange on which the Common Stock is then listed or the over the counter market and (y) duly authorized, validly issued and non-assessable, and the issuance of such PIK Shares shall not be subject to any preemptive or similar rights and (E) the Issuer's Resale Registration Statement shall have been declared effective by the SEC subject to the requirements of the Registration Rights Agreement. If the foregoing conditions are not met and the Issuer otherwise has the ability to elect to pay PIK Interest, the Issuer may pay such PIK Interest as PIK Note Payments.

(iii) For any Interest Payment Date on or prior to December 31, 2018, the Issuer shall be permitted to pay PIK Interest in its sole discretion. For any Interest Payment Date after December 31, 2018, if the Liquidity for such Interest Period shall:

(1) equal or exceed $225.0 million, then the Issuer must pay Cash Interest on 100% of the principal amount of Notes outstanding, payable at the applicable Cash Interest Rate, and no PIK Interest may be paid;

(2) equal or exceed $200.0 million but be less than $225.0 million, then the Issuer may, at its option, elect to pay interest on (x) 25% of the then outstanding principal amount of the Notes as PIK Interest, payable at the applicable PIK Interest Rate, and (y) 75% of the then outstanding principal amount of the Notes as Cash Interest, payable at the applicable Cash Interest Rate;

(3) equal or exceed $175.0 million but be less than $200.0 million, then the Issuer may, at its option, elect to pay interest on (x) 50% of the then outstanding principal amount of the Notes as PIK Interest, payable at the applicable PIK Interest Rate, and (y) 50% of the then outstanding principal amount of the Notes as Cash Interest, payable at the applicable Cash Interest Rate;

(4) equal or exceed $150.0 million but be less than $175.0 million, then the Issuer may, at its option, elect to pay interest on (x) 75% of the then outstanding principal amount of the Notes as PIK Interest, payable at the applicable PIK Interest Rate, and (y) 25% of the then outstanding principal amount of the Notes as Cash Interest, payable at the applicable Cash Interest Rate; or

(5) be less than $150.0 million, then the Issuer shall be permitted to pay PIK Interest on 100% of the principal amount of Notes outstanding, payable at the applicable PIK Interest Rate.

(iv) Cash Interest Rate. Cash Interest on the Notes shall accrue at a rate of 8.0% per annum and be payable in cash; provided that if the Requisite Shareholder Approvals are not obtained on or prior to the Requisite Shareholder Approval Deadline, Cash Interest on the Notes shall accrue at a rate of 15.0% per annum and be payable in cash; provided further that upon the occurrence and during the continuance of an Event of Default, the rate at which Cash Interest on the Notes accrues shall increase by an additional 2.0% per annum (the "Cash Interest Rate"). In the event the Requisite Shareholder Approvals are not obtained on or prior to the Requisite Shareholder Approval Deadline, the Issuer shall promptly provide written notice of such event to the Trustee and the Paying Agent.

(v) PIK Interest Rate. Any PIK Interest on the Notes shall accrue at a rate of 11.0% per annum; provided that if the Requisite Shareholder Approvals are not obtained on or prior to the Requisite Shareholder Approval Deadline, PIK Interest on the Notes shall accrue at a rate of 20.0% per annum; provided further that upon the occurrence and during the continuance of an Event of Default, the rate at which PIK Interest on the Notes accrues shall increase by an additional 2.0% per annum (the "PIK Interest Rate"). In the event the Requisite Shareholder Approvals are not obtained on or prior to the Requisite Shareholder Approval Deadline, the Issuer shall promptly provide written notice of such event to the Trustee and the Paying Agent.

(vi) Payment of PIK Interest.

(1) PIK Interest shall be payable in PIK Shares in an amount calculated by the Issuer by dividing the outstanding balance of the accrued PIK Interest after giving effect to any interest to be paid in Cash Interest on the outstanding principal amount of the Notes by the 20-day volume weighted average price per share of the Issuer's Common Stock on the New York Stock Exchange (or the over-the-counter market or other exchange on which the Common Stock is then listed) calculated as at the end of the three Trading Days prior to the Determination Date, rounded up to the nearest share of Common Stock. With respect to any PIK Share Payments, the Issuer shall deliver such PIK Shares in payment of PIK Interest to the Holders on the relevant Interest Payment Date. On the relevant Interest Payment Date, the Issuer shall deliver to the Trustee an Officers' Certificate certifying that the issuance of PIK Shares as payment of all or a portion of PIK Interest on such Interest Payment Date has been made in accordance with the Indenture and Officers' Certificate delivered to the Trustee with respect to such Interest Payment Date pursuant to Section 2.01(c)(viii).

(2) PIK Note Payments shall be effected by issuing PIK Notes in certificated form in an aggregate principal amount equal to the percentage of PIK Interest to be paid on the principal amount of Notes held by each Holder on the relevant Record Date, after giving effect to any interest to be paid in Cash Interest, less any PIK Share Payment to be made on such Interest Payment Date (rounded up to the nearest $1.00), and the Trustee will, upon receipt of an Authentication Order, authenticate and deliver such PIK Notes on the Interest Payment Date in certificated form for original issuance to the Holders of record on the relevant Record Date, as shown in the Note Register.

(3) Any PIK Notes will be dated as of the applicable Interest Payment Date and will bear interest from and after such date. All Notes issued pursuant to a PIK Note Payment will mature on March 20, 2022 and will be governed by, and subject to, the terms, provisions and conditions of this Indenture and shall have the same rights and benefits as the Initial Notes. Following an increase in the principal amount of the outstanding Notes as a result of a PIK Note Payment, the Notes shall accrue interest on such increased principal amount from and after the related Interest Payment Date on which such PIK Notes were issued.

(4) PIK Share Payments shall be made by the Issuer to the respective Holders and certified to the Trustee in accordance with Sections 2.01(c)(vi)(1).

(5) In the event that the Issuer is permitted to and elects to pay a portion of the interest on the Notes as Cash Interest and a portion as PIK Interest, such Cash Interest and PIK Interest shall be paid to Holders pro rata in accordance with their interests; provided that if the Issuer determines, in its sole discretion, that any PIK Share Payment would cause the condition in clause (c)(ii)(B) above to not be met, then the Issuer may elect, upon the prior written consent of the Eligible Holders representing a majority of the principal amount of Notes held by such Eligible Holders, to issue the maximum PIK Share Payments to the Holders of Notes (which need not be on a pro rata basis) such that the condition in clause (c)(ii)(B) would continue to be satisfied following the issuance of such PIK Shares and any remaining interest due after giving effect to such election shall be paid by the Issuer in PIK Notes. The Issuer shall provide the Trustee and the Holders with notice of any election pursuant to this Section 2.01(c)(vi)(5) at least five (5) Business Days' prior to the applicable Interest Payment Date. Notwithstanding anything to the contrary contained herein, the Issuer shall not make PIK Payments on the Notes if any cash interest is paid pursuant to the 1.75 Lien Credit Agreement; provided, however, that the Issuer will be permitted to pay Cash Interest under the 1.75 Lien Credit Agreement solely to the extent any payment of interest in shares of Common Stock under the 1.75 Lien Credit Agreement would cause the condition in the 1.75 Lien Credit Agreement analogous to the condition set forth in clause (c)(ii)(B) not to be met and provided, further, however, that the Issuer shall be permitted to pay cash interest on the 1.75 Lien Credit Agreement for the interest payment due on June 20, 2017 and will not be required to pay cash interest on the Notes for the initial Interest Payment Date as a result thereof.

(vii) The insufficiency or lack of funds available to the Issuer to pay Cash Interest as required pursuant to this Section 2.01(c) shall not permit the Issuer to pay PIK Interest in respect of any Interest Payment Date and the sole right of the Issuer to elect to pay PIK Interest shall be subject to the terms and conditions set forth in Section 2.01(c)(ii) and (iii).

(viii) No later than the twentieth (20th) day prior to each Interest Payment Date, the Issuer shall deliver to the Trustee and the Paying Agent (if other than the Trustee) an Officers' Certificate certifying (i) that the Issuer is permitted to pay PIK Interest in the amounts set forth in the notice on the Next Interest Payment Date in accordance with the Indenture and is electing to pay PIK Interest on the next Interest Payment Date, (ii) the amount of interest to be paid on the next Interest Payment Date, (iii) the amount of PIK Interest to be paid as PIK Notes, if any, on the next Interest Payment Date, (iv) the amount of PIK Interest to be paid as PIK Shares, if any, on the next Interest Payment Date and the number of PIK Shares, if any, to be issued in connection therewith and (v) if Cash Interest and PIK Interest will not be paid to the Holders on a pro rata basis, that the Issuer is electing to make such payments in accordance with Section 2.01(c)(vi)(5) hereof and the amount of Cash Interest, amount of PIK Notes and number of PIK Shares (and the amount of PIK Interest represented by such PIK Shares), as applicable, to be paid to each Holder on the next Interest Payment Date. The Trustee shall promptly deliver a copy of such notice to the Holders.

(ix) Notwithstanding anything to the contrary, the payment of accrued and unpaid interest through the redemption or repurchase date in connection with any redemption or repurchase of the Notes as described under Sections 3.07, 4.10 and 4.14 shall be payable solely in cash at the applicable interest rate for such Interest Period or portion thereof.

(x) In the event that any PIK Share Payment is made, the Issuer shall use its best efforts to keep a Resale Registration Statement continuously effective until such time as no PIK Shares are held by any Holder, subject to any rights to delay or suspend or limit such registration pursuant to the Registration Rights Agreement.

(xi) Interest shall be computed on the basis of a 360-day year comprised of twelve (12) 30-day months.

Section 2.02. Execution and Authentication.

At least one Officer shall execute the Notes on behalf of the Issuer by manual or facsimile signature. If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note shall nevertheless be valid.

A Note shall not be entitled to any benefit under this Indenture or be valid or obligatory for any purpose until authenticated substantially in the form of Exhibit A attached hereto by the manual signature of the Trustee. The signature shall be conclusive evidence that the Note has been duly authenticated and delivered under this Indenture.

On the Issue Date, the Trustee shall, upon receipt of an Issuer Order (an "Authentication Order"), authenticate and deliver the Initial Notes.

In addition, in connection with the election to pay PIK Interest (upon the terms and conditions set forth herein and in the Notes), the Issuer may deliver PIK Notes executed by the Issuer to the Trustee for authentication, together with an Authentication Order for authentication and delivery of PIK Notes, specifying the principal amount of and Holder of each Note, directing the Trustee to authenticate the PIK Notes and deliver the same to the persons in such order certifying the issuance of such Notes is permitted under this Indenture and the Trustee in accordance with such Authentication Order shall authenticate and deliver such PIK Notes.

Notwithstanding anything to the contrary in this Indenture, if a PIK Note Payment has been made, the Notes shall be in minimum denominations of $1.00 and any integral multiple of $1.00 in excess thereof.

The Trustee may appoint an authenticating agent acceptable to the Issuer to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Issuer.

Section 2.03. Registrar and Paying Agent.

The Issuer shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("Registrar") and an office or agency where Notes may be presented for payment ("Paying Agent"). The Registrar shall keep a register of the Notes (including the name and address of each Holder, and such Holder's right to the principal of, and sated interest on, the Notes) ("Note Register") and of their transfer and exchange. The Issuer may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Issuer may change any Paying Agent or Registrar without prior notice to any Holder. The Issuer shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Issuer fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Issuer or any of its Subsidiaries may act as Paying Agent or Registrar.

Section 2.04. Paying Agent to Hold Money in Trust.

The Issuer shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and shall notify the Trustee of any default by the Issuer in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Issuer at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Issuer or a Subsidiary) shall have no further liability for the money. If the Issuer or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Issuer, the Trustee shall serve as Paying Agent for the Notes.

Section 2.05. Holder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders. Upon request by the Issuer in respect of an

Interest Payment Date, the Trustee shall furnish to the Issuer no later than two Business Days after the related Record Date, a list of names, addresses, federal tax identification numbers and principal amounts of Notes held by the Holders as of such Record Date. Upon request by the Issuer, in respect of any date that is not an Interest Payment Date, the Trustee shall furnish such information to the Issuer within two Business Days of such request. If the Trustee is not the Registrar, upon request the Issuer shall furnish to the Trustee at least two Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may require of the names and addresses of the Holders of Notes.

Section 2.06. Transfer and Exchange.

(a) Upon request by a Holder and such Holder's compliance with the provisions of this Section 2.06(a) and Section 2.13 (including, without limitation, the receipt by the Registrar of a Confirmation Notice consenting to any Transfer subject to Section 2.13), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(a):

(i) Restricted Definitive Notes to Restricted Definitive Notes. Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(1) if the transfer shall be made pursuant to a QIB in accordance with Rule 144A, then the transferor must deliver a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(2) if the transfer shall be made pursuant to Rule 903 or Rule 904 then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; or

(3) if the transfer shall be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications required by item (3) thereof, if applicable.

(ii) Restricted Definitive Notes to Unrestricted Definitive Notes. Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if:

(1) the Registrar receives the following:

(i) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit C hereto; or

(ii) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (ii), an Opinion of Counsel to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) Unrestricted Definitive Notes to Unrestricted Definitive Notes. A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(b) Legends.

(i) The following legends (the "Private Placement Legend") shall appear on the face of all Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture:

"THIS NOTE (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS NOTE MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS NOTE IS HEREBY NOTIFIED THAT THE SELLER OF THIS NOTE MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THE HOLDER OF THIS NOTE AGREES FOR THE BENEFIT OF EXCO RESOURCES, INC. (THE "ISSUER") THAT (A) THIS NOTE MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) TO THE ISSUER OR ANY OF ITS SUBSIDIARIES, (II) IN THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (III) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 903 OR RULE 904 UNDER THE SECURITIES ACT, (IV) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT (IF AVAILABLE), OR (V) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND IN EACH OF CASES (I) THROUGH (V) IN ACCORDANCE WITH ALL APPLICABLE U.S. STATE SECURITIES LAWS, AND IN CASE (IV) SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM, AND (B) THE HOLDER SHALL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS NOTE FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

THIS NOTE IS SUBJECT TO AND MAY ONLY BE SOLD, DISPOSED OF OR OTHERWISE TRANSFERRED IN COMPLIANCE WITH CERTAIN RIGHTS OF FIRST REFUSAL.

THIS LEGEND CAN ONLY BE REMOVED IN THE DISCRETION OF THE ISSUER."

Notwithstanding the foregoing, any Definitive Note issued pursuant to subparagraph (a)(ii) or (a)(iii) of this Section 2.06 (and all Notes issued in exchange therefor or substitution thereof) shall not bear the Private Placement Legend.

(ii) The following legends shall appear on the face of the Notes issued under this Indenture:

"THIS NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE")) FOR U.S. FEDERAL INCOME TAX PURPOSES, AND THIS LEGEND IS REQUIRED BY SECTION 1275(c) OF THE CODE. UPON WRITTEN REQUEST, THE COMPANY WILL PROMPTLY MAKE AVAILABLE TO ANY HOLDER OF THIS NOTE THE FOLLOWING INFORMATION: (1) THE ISSUE PRICE AND DATE OF THE NOTE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THE NOTE AND (3) THE YIELD TO MATURITY OF THE NOTE. HOLDERS SHOULD CONTACT CHIEF FINANCIAL OFFICER AT EXCO RESOURCES, INC. 12377 MERIT DRIVE, SUITE 1700 DALLAS, TEXAS."

(iii) Any PIK Shares shall, if required by applicable law be issued with such restrictive legends as the Issuer shall determine are required; provided, that no legends shall be required if such PIK Shares are issued pursuant to an effective Resale Registration Statement.

(c) General Provisions Relating to Transfers and Exchanges.

(i) To permit registrations of transfers and exchanges, the Issuer shall execute and the Trustee shall authenticate Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar's request.

(ii) No service charge shall be made to a Holder for any registration of transfer or exchange, but the Issuer may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.07, 2.10, 3.06, 3.09, 4.10, 4.14 and 9.05 hereof).

(iii) Neither the Registrar nor the Issuer shall be required to register the transfer of or exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(iv) All Definitive Notes issued upon any registration of transfer or exchange of Definitive Notes shall be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Definitive Notes surrendered upon such registration of transfer or exchange.

(v) The Issuer shall not be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business fifteen (15) days before the day of any selection of Notes for redemption under Section 3.02 hereof and ending at the close of business on the day of selection, (B) to register the transfer of or to exchange any Note so selected for redemption or tendered (and not withdrawn) for repurchase in connection with a Change of Control Offer, an Asset Sale Offer or other tender offer, in whole or in part, except the unredeemed portion of any Note being redeemed in part or (C) to register the transfer of or to exchange a Note between a Record Date and the next succeeding Interest Payment Date.

(vi) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuer may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of (and premium, if any) and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuer shall be affected by notice to the contrary.

(vii) Upon surrender for registration of transfer of any Note at the office or agency of the Issuer designated pursuant to Section 4.02 hereof, the Issuer shall execute, and the Trustee shall, upon receipt of an Authentication Order, authenticate and deliver, in the name of the designated transferee or transferees, one or more replacement Notes of any authorized denomination or denominations of a like aggregate principal amount.

(viii) At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination or denominations of a like aggregate principal amount upon surrender of the Notes to be exchanged at such office or agency. Whenever any Definitive Notes are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and mail, the replacement Definitive Notes which the Holder making the exchange is entitled to in accordance with the provisions of Section 2.02 hereof.

(ix) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

(x) Each Holder of a Note agrees to indemnify the Issuer, the Trustee and the Registrar against any liability that may result from the transfer, exchange or assignment of such Holder's Note in violation of any provision of this Indenture and/or applicable United States federal or state securities laws.

Neither the Trustee nor any Agent shall have any obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture (including Section 2.13 hereof) or under applicable law with respect to any transfer of any interest in any Note other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.07. Replacement Notes.

If any mutilated Note is surrendered to the Trustee, the Registrar or the Issuer and the Trustee receives evidence to its satisfaction of the ownership and destruction, loss or theft of any Note, the Issuer shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note if the Trustee's requirements are met. If required by the Trustee or the Issuer, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Issuer to protect the Issuer, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Issuer may charge for its expenses in replacing a Note.

Every replacement Note is a contractual obligation of the Issuer and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08. Outstanding Notes.

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Issuer or an Affiliate of the Issuer holds the Note.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receive proof satisfactory to it that the replaced Note is held by a bona fide purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Issuer, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

Section 2.09. Treasury Notes.

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Issuer, or by any Subsidiary of the Issuer, shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that a Trust Officer of the Trustee knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to deliver any such direction, waiver or consent with respect to the Notes and that the pledgee is not the Issuer or any obligor upon the Notes or any Affiliate of the Issuer or of such other obligor.

Section 2.10. Temporary Notes.

Until certificates representing Notes are ready for delivery, the Issuer may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of certificated Notes but may have variations that the Issuer considers appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, the Issuer shall prepare and the Trustee shall, upon receipt of an Authentication Order, authenticate definitive Notes in exchange for temporary Notes. Holders of temporary Notes shall be entitled to all of the benefits accorded to Holders of Notes under this Indenture.

Section 2.11. Cancellation.

The Issuer at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee or, at the direction of the Trustee, the Registrar or the Paying Agent and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall dispose of cancelled Notes in accordance with its standard procedures (subject to the record retention requirement of the Exchange Act). Certification of the destruction of all cancelled Notes shall be delivered to the Issuer, upon the Issuer's written request. The Issuer may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12. Defaulted Interest.

If the Issuer defaults in a payment of interest on the Notes, it shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Issuer shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment, and at the same time the Issuer shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such defaulted interest as provided in this Section 2.12. The Trustee shall fix or cause to be fixed each such special record date and payment date; provided that no such special record date shall be less than ten (10) days prior to the related payment date for such defaulted interest. The Trustee shall promptly notify the Issuer of such special record date. At least fifteen (15) days before the special record date, the Issuer (or, upon the written request of the Issuer, the Trustee in the name and at the expense of the Issuer) shall mail or cause to be mailed, first-class postage prepaid, to each Holder a notice at his or her address as it appears in the Note Register that states the special record date, the related payment date and the amount of such interest to be paid.

Subject to the foregoing provisions of this Section 2.12 and for greater certainty, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

Section 2.13. Consent Right; Right of First Refusal; Tag-Along Rights.

(a) Each Holder agrees that it shall not, without the prior written consent of Eligible Holders representing a majority of the principal amount of Notes held by such Eligible Holders (which consent may be withheld in the sole and absolute discretion of the Eligible Holders), sell, assign or otherwise transfer or dispose of Notes (such sale, assignment or other transfer or disposition of any kind (other than a sale, assignment or other transfer or disposition of any kind to an Affiliate of such Holder), a "Transfer") at any time prior to March 20, 2019. Each Holder, by accepting or purchasing any Notes, is deemed to acknowledge, and agree to be bound by, the provisions of this Section 2.13.

(b) In the event that any Holder (a "Transferor") proposes to Transfer any of its Notes at any time on or after March 20, 2019, Eligible Holders shall have (i) a right to purchase all or any portion of such Holder's Notes subject to such Transfer (a "Right of First Refusal"); or

(ii) the Tag-Along Rights as defined below; provided that in the event of a Transfer to the Issuer or any of its Subsidiaries (an "Issuer Transfer"), the foregoing shall not apply but the Issuer or such Subsidiary shall only be permitted to complete the Issuer Transfer if the Issuer or such Subsidiary repurchases Notes from any Eligible Holders that elect to have their Notes purchased on a pro rata basis in connection with the proposed Issuer Transfer at the same price such Notes are proposed to be purchased in the Issuer Transfer (which price, for the avoidance of doubt may be at below par and/or below the redemption price which may be applicable at such time). The Eligible Holders shall have the right to elect to Transfer Notes to the Proposed Transferee (as defined herein) on the same terms as the Transferor's proposed Transfer in an amount equal to the aggregate principal amount of Notes the Proposed Transferee (as defined herein) actually proposes to purchase as set forth in the Transfer Notice (as defined herein) multiplied by a fraction, the numerator of which shall be the aggregate principal amount of Notes held by such Transferor and the denominator of which shall be the aggregate principal amount of Notes held by the Transferor and the Eligible Holders electing to exercise their Tag-Along Rights (the "Tag-Along Rights") and such Transferor shall have the amount of its Offered Notes Transferred to such Proposed Transferee reduced by such amount.

(c) In the event of any proposed Transfer pursuant to clause (a) or (b) above, the Transferor shall deliver to the Eligible Holders (with a copy to the Trustee) a written notice (the "Transfer Notice") stating: (i) the Transferor's intention to Transfer such Notes (the "Offered Notes"); (ii) the name, address and phone number of each proposed purchaser or other transferee (the "Proposed Transferee"); (iii) the aggregate principal amount of Offered Notes to be Transferred to each Proposed Transferee; and (iv) the bona fide cash price for which the Transferor proposes to Transfer the Offered Notes (the "Offered Price"); and (v) a request that the Eligible Holders make an election, if any, to exercise their Right of First Refusal or Tag-Along Rights. Any Transfer Notice to the Eligible Holders shall be delivered to each of the Eligible Holders (with a copy to the Trustee) at their respective addresses set forth in Exhibit E hereto.

(d) Within ten (10) Business Days (the "Notice Period") after the Eligible Holders receive a Transfer Notice, the Eligible Holders shall deliver to the Transferor (with a copy to the Trustee) a written notice (a "Confirmation Notice") stating whether the Eligible Holders are electing to exercise their Right of First Refusal or Tag-Along Rights.

(e) If any Eligible Holders elect to exercise their Right of First Refusal, participating Eligible Holders shall be entitled to purchase, at the Offered Price, their pro rata share of Offered Notes based on the aggregate principal amount of Notes held by each Eligible Holder as of the Issue Date. Payment of the purchase price for the Offered Notes purchased by an Eligible Holder exercising its Right of First Refusal shall be made directly to the Transferor within five (5) Business Days after the end of the Notice Period.

(f) If any Eligible Holders elect to exercise their Tag-Along Rights, participating Eligible Holders ("Tag-Along Holders") shall be entitled to Transfer, at the Offered Price, their pro rata share of Offered Notes in accordance with clause (b) above. To the extent that any Proposed Transferee refuses to purchase Notes from a Tag-Along Holder exercising its Tag-Along Rights hereunder, such Transferor shall not Transfer to such Proposed Transferee any Notes unless and until, simultaneously with such Transfer, such Proposed Transferee shall purchase such Notes from such a Tag-Along Holder on the same terms and conditions specified in the Transfer Notice.

(g) If the Eligible Holders decline to exercise their Right of First Refusal with respect to all or any portion of the Offered Notes (the "Unexercised Notes"), then the Transferor shall be permitted to Transfer such Unexercised Notes to the Proposed Transferee, subject to any Tag-Along Rights, at the Offered Price provided that such Transfer (i) is consummated within five (5) Business Days after the end of the Refusal Period; (ii) is on terms no more favorable than the terms proposed in the Transfer Notice; and (iii) is otherwise completed in accordance with Section 2.06 hereof. If the Offered Notes are not so Transferred during such five (5) Business Day period, then the Transferor may not Transfer any of such Offered Notes without complying again in full with the provisions of this Indenture.

ARTICLE 3

REDEMPTION

Section 3.01. Notices to Trustee.

If the Issuer elects to redeem Notes pursuant to Section 3.07 hereof, it shall furnish to the Trustee, at least five (5) Business Days (or such shorter time period as the Trustee may agree) before notice of redemption is required to be mailed or caused to be mailed to Holders pursuant to Section 3.03 hereof but not more than sixty (60) days before a redemption date, an Officers' Certificate setting forth (i) the paragraph or subparagraph of such Note and/or Section of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of the Notes to be redeemed and (iv) the redemption price.

Section 3.02. Selection of Notes to Be Redeemed or Purchased.

If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee shall select the Notes to be redeemed or purchased (a) if the Issuer notifies the Trustee that the Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Notes are listed, (b) on a pro rata basis or (c) to the extent that selection on a pro rata basis is not practicable by lot or by such other method the Trustee considers fair and appropriate. In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased shall be selected, unless otherwise provided herein, not less than 30 nor more than sixty (60) days prior to the redemption date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee shall promptly notify the Issuer in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected shall be in amounts of at least $2,000 or whole multiples of $1,000 in excess thereof (or if a PIK Note Payment has been made, Notes may be redeemed in minimum denominations of $1.00 and any integral multiple of $1.00 in excess thereof). No Notes of $2,000 or less can be redeemed in part, except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder, even if not a multiple of $1,000, shall be redeemed or purchased (or if a PIK Note Payment has been made, the Notes may be redeemed in minimum denominations of $1.00 and any integral multiple in excess thereof). Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03. Notice of Redemption.

Subject to Section 3.09 hereof, the Issuer shall deliver electronically or mail or cause to be mailed by first-class mail, postage prepaid, notices of redemption at least thirty (30) days but not more than sixty (60) days before the Redemption Date to each Holder of Notes to be redeemed at such Holder's registered address (with a copy to the Trustee), except that redemption notices may be mailed more than sixty (60) days prior to a redemption date if the notice is issued in connection with Article 7 or Article 11 hereof. Except as set forth in Section 3.07 hereof, notices of redemption may not be conditional.

The notice shall identify the Notes to be redeemed and shall state:

(a) the redemption date;

(b) the redemption price;

(c) if any Note is to be redeemed in part only, the portion of the principal amount of that Note that is to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion of the original Note representing the same indebtedness to the extent not redeemed shall be issued in the name of the Holder of the Notes upon cancellation of the original Note;

(d) the name and address of the Paying Agent;

(e) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(f) that, unless the Issuer defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(g) the paragraph or subparagraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and

(h) if in connection with a redemption pursuant to Section 3.07 hereof, any condition to such redemption.

At the Issuer's request, the Trustee shall give the notice of redemption in the Issuer's name and at its expense; provided that the Issuer shall have delivered to the Trustee, at least five (5) Business Days (or such shorter period as the Trustee may agree) before notice of redemption is required to be delivered or mailed to Holders pursuant to this Section 3.03 (unless a shorter notice shall be agreed to by the Trustee), an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04. Effect of Notice of Redemption.

Once notice of redemption is delivered or mailed in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date, unless such redemption is conditioned on the happening of a future event at the redemption price. The notice, if delivered or mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the Holder of any Note designated for redemption in whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. Subject to Section 3.05 hereof, on and after the redemption date, interest ceases to accrue on Notes or portions of Notes called for redemption.

Section 3.05. Deposit of Redemption or Purchase Price.

Prior to 11:00 a.m. (Eastern Time) on the redemption or purchase date, the Issuer shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued and unpaid interest on all Notes to be redeemed or purchased on that date (including any PIK Notes). The Trustee or the Paying Agent shall promptly return to the Issuer any money deposited with the Trustee or the Paying Agent by the Issuer in excess of the amounts necessary to pay the redemption price of, and accrued and unpaid interest on, all Notes to be redeemed or purchased.

If the Issuer complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest shall cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after a Record Date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest to the redemption or purchase date shall be paid to the Person in whose name such Note was registered at the close of business on such Record Date. If any Note called for redemption or purchase shall not be so paid upon surrender for redemption or purchase because of the failure of the Issuer to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest accrued to the redemption or purchase date not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06. Notes Redeemed or Purchased in Part.

Upon surrender of a Note that is redeemed or purchased in part, the Issuer shall issue and the Trustee shall authenticate for the Holder at the expense of the Issuer a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered representing the same indebtedness to the extent not redeemed or purchased; provided that each new Note shall be in a minimum principal amount of $2,000 or an integral multiple of $1,000 in excess thereof (or if a PIK Note Payment has been made, the Notes shall be in minimum denominations of $1.00 and any integral multiple of $1.00 in excess thereof). It is understood that, notwithstanding anything in this Indenture to the contrary, only an Authentication Order and not an Opinion of Counsel or Officers' Certificate is required for the Trustee to authenticate such new Note.

Section 3.07. Optional Redemption.

(a) At any time prior to March 20, 2018, the Issuer may redeem the Notes, in whole or in part, upon notice as described under Section 3.03 hereof, at a redemption price equal to 100% of the principal amount of the Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but excluding the date of redemption (the "Redemption Date"), subject to the rights of Holders on the relevant Record Date to receive interest due on the relevant Interest Payment Date.

(b) On and after March 20, 2018, the Issuer may redeem the Notes, in whole or in part, upon notice as described under Section 3.03 hereof, at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, plus accrued and unpaid interest thereon, if any, to, but excluding the applicable Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant

Interest Payment Date, if redeemed during the twelve-month period beginning on March 20 of each of the years indicated below:

Year	Percentage
2018	108.000%
2019	104.000%
2020	102.000%
2021 and thereafter	100.000%

(c) Any redemption or notice of any redemption pursuant to this Section 3.07 may, at the Issuer's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of an offering or other corporate transaction or event.

(d) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof and shall be made on a pro rata basis between the Initial Notes and PIK Notes, subject to adjustment in a manner that most nearly approximates a pro rata basis.

Section 3.08. Mandatory Redemption.

The Issuer shall not be required to make any mandatory redemption or sinking fund payments with respect to the Notes.

Section 3.09. Offer to Repurchase by Application of Net Cash Proceeds.

(a) In the event that, pursuant to Section 4.10 hereof, the Issuer shall be required to commence an Asset Sale Offer, it shall follow the procedures specified below.

(b) The Asset Sale Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the "Offer Period"). No later than five (5) Business Days after the termination of the Offer Period (the "Purchase Date"), the Issuer shall apply all Net Cash Proceeds, as applicable (the "Offer Amount"), to the purchase of Notes and, if required pursuant to Section 4.10(c), or, if less than the Offer Amount has been tendered, all Notes, Senior Priority Lien Debt and Priority Lien Debt tendered in response to the Asset Sale Offer. Payment for any Notes so purchased shall be made in the same manner as interest payments are made.

(c) If the Purchase Date is on or after a Record Date and on or before the related Interest Payment Date, any accrued and unpaid interest, if any, up to but excluding the Purchase Date, shall be paid to the Person in whose name a Note is registered at the close of business on such Record Date, and no additional interest shall be payable to Holders who tender Notes pursuant to the Asset Sale Offer.

(d) Upon the commencement of an Asset Sale Offer, the Issuer shall send, by first-class mail, a notice to each of the Holders, with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Asset Sale Offer. The Asset Sale Offer shall be made to all Holders and holders of Senior Priority Lien Debt and Priority Lien Debt, if required. The notice, which shall govern the terms of the Asset Sale Offer, shall state:

(i) that the Asset Sale Offer is being made pursuant to this Section 3.09 and Section 4.10 hereof and the length of time the Asset Sale Offer shall remain open;

(ii) the Offer Amount, the purchase price and the Purchase Date;

(iii) that any Note not tendered or accepted for payment shall continue to accrue interest;

(iv) that, unless the Issuer defaults in making such payment, any Note accepted for payment pursuant to the Asset Sale Offer shall cease to accrue interest after the Purchase Date;

(v) that Holders electing to have a Note purchased pursuant to an Asset Sale Offer may elect to have Notes purchased in amounts of $2,000 or whole multiples of $1,000 in excess thereof only (or if a PIK Note Payment has been made, the Notes may be purchased in minimum denominations of $1.00 and any integral multiple of $1.00 in excess thereof);

(vi) that Holders electing to have a Note purchased pursuant to any Asset Sale Offer shall be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" attached to the Note completed to the Issuer or a Paying Agent at the address specified in the notice at least three days before the Purchase Date;

(vii) that Holders shall be entitled to withdraw their election if the Issuer or the Paying Agent, as the case may be, receives, not later than the expiration of the Offer Period, a telegram, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;

(viii) that, if the aggregate principal amount of Notes, Senior Priority Lien Debt and Priority Lien Debt surrendered by the holders thereof exceeds the Offer Amount, the Issuer shall select the Notes, the Senior Priority Lien Debt and the Priority Lien Debt to be purchased pursuant to Section 4.10 (with such adjustments as may be deemed appropriate by the Trustee so that only Notes in denominations of $2,000, or integral multiples of $1,000 in excess thereof, shall be purchased (or if a PIK Note Payment has been made, the Notes shall be in minimum denominations of $1.00 and any integral multiple of $1.00 in excess thereof); provided that no Notes of $2,000 or less can be redeemed in part, except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder, even if not a multiple of $1,000, shall be redeemed or purchased) (or if a PIK Note Payment has been made, the Notes shall be in minimum denominations of $1.00 and any integral multiple of $1.00 in excess thereof); and

(ix) that Holders whose Notes were purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered representing the same indebtedness to the extent not repurchased.

(e) On or before the Purchase Date, the Issuer shall, to the extent lawful, (1) accept for payment, on a pro rata basis to the extent necessary, the Offer Amount of Notes or portions thereof validly tendered pursuant to the Asset Sale Offer, or if less than the Offer Amount has been tendered, all Notes tendered and (2) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions thereof so tendered.

(f) The Issuer or the Paying Agent, as the case may be, shall promptly mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes properly tendered by such Holder and accepted by the Issuer for purchase, and the Issuer shall promptly issue a new Note, and the Trustee, upon receipt of an Authentication Order, shall authenticate and mail or deliver such new Note to such Holder (it being understood that, notwithstanding anything in this Indenture to the contrary, no Opinion of Counsel or Officers' Certificate is required for the Trustee to authenticate and mail or deliver such new Note) in a principal amount equal to any unpurchased portion of the Note surrendered representing the same indebtedness to the extent not repurchased; provided, that each such new Note shall be in a principal amount of $2,000 or an integral multiple of $1,000 in excess thereof (or if a PIK Note Payment has been made, the Notes shall be in minimum denominations of $1.00 and any integral multiple of $1.00 in excess thereof). Any Note not so accepted shall be promptly mailed or delivered by the Issuer to the Holder thereof. The Issuer shall publicly announce the results of the Asset Sale Offer on or as soon as practicable after the Purchase Date.

The Issuer shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 3.09, the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 3.09 by virtue thereof.

Other than as specifically provided in this Section 3.09 or Section 4.10 hereof, any purchase pursuant to this Section 3.09 shall be made pursuant to the applicable provisions of Sections 3.01 through 3.06 hereof.

ARTICLE 4

COVENANTS

Section 4.01. Payment of Notes.

The Issuer shall pay or cause to be paid the principal of, premium, if any, and cash interest or issue PIK Notes or PIK Shares, if applicable, to pay the PIK Interest on the Notes on the dates and in the manner provided in the Notes and this Indenture. Principal, premium, if any, cash interest or any PIK Notes or PIK Shares sufficient to pay all PIK Interest on the Notes shall be considered paid on the date due if (i) the Paying Agent, if other than the Issuer or a Subsidiary, in the case of cash payments, holds as of 11:00 a.m. Eastern Time on the due date, money deposited by the Issuer in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due, (ii) if PIK Interest is payable in the form of PIK Notes, the Trustee has received delivery of an Authentication Order on or prior to the date the payment is due of any PIK Notes to be authenticated and delivered sufficient to pay all PIK Interest then due and (iii) if PIK Interest is payable in the form of PIK Shares, the Trustee has received an Officers' Certificate pursuant to Section 2.01(c)(vi)(1).

The Issuer shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to the then applicable interest rate on the Notes to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

Section 4.02. Maintenance of Office or Agency.

The Issuer shall maintain an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. The Issuer shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Issuer may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided that no such designation or rescission shall in any manner relieve the Issuer of its obligation to maintain an office or agency for such purposes. The Issuer shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuer hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Issuer in accordance with Section 2.03 hereof; provided that the Corporate Trust Office of the Trustee shall not be an office or agency of the Issuer for the purpose of effecting service of legal process on the Issuer.

Section 4.03. Reports and Other Information.

So long as any Notes are outstanding, the Issuer shall furnish to the Trustee and, upon request, to Holders a copy of all of the information and reports referred to in clauses (a) and (b) below:

(a) within ninety (90) days after the end of each fiscal year of the Issuer, the audited consolidated (and unaudited consolidating) balance sheet and related consolidated (and with respect to statements of operations, consolidating) statements of operations, stockholders' equity and cash flows of the Issuer and its Consolidated Subsidiaries as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by a firm of independent public accountants registered with the PCAOB (and following the fiscal year ending December 31, 2017, without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated and consolidating financial statements present fairly in all material respects the financial condition and results of operations of the Issuer and its Consolidated Subsidiaries on a consolidated and consolidating basis in accordance with GAAP consistently applied; provided, that if the Issuer has established any Unrestricted Subsidiaries, such consolidated statements shall be accompanied by a balance sheet as of such date, and a statement of income and cash flows for such period, reflecting on a combined basis, for Restricted Subsidiaries and on a combined basis for Unrestricted Subsidiaries, the consolidating entries for each of such types of Subsidiaries;

(b) within forty-five (45) days after the end of each fiscal quarter of the Issuer, the consolidated (and unaudited consolidating) balance sheet and related consolidated (and with respect to statements of operations, consolidating) statements of operations and cash flows of the Issuer and its Consolidated Subsidiaries as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified pursuant to an Officers' Certificate as presenting fairly in all material respects the financial condition and results of operations of the Issuer and its Consolidated Subsidiaries on a consolidated and consolidating basis in accordance with GAAP

consistently applied, subject to normal year-end audit adjustments and the absence of footnotes; provided, that if the Issuer has established any Unrestricted Subsidiaries, such consolidated statements shall be accompanied by a balance sheet as of such date, and a statement of income and cash flows for such period, reflecting on a combined basis, for Restricted Subsidiaries and on a combined basis for Unrestricted Subsidiaries, the consolidating entries for each of such types of Subsidiaries;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, an Officers' Certificate certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto;

(d) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Issuer or any Subsidiary with the SEC, or any Governmental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, or distributed by the Issuer to its shareholders generally, as the case may be; provided, however that this clause (d) shall be deemed satisfied by the filing with the SEC of the documentation required within the time periods specified in the applicable rules and regulations of the SEC;

(e) as soon as available, the Reserve Report required pursuant to Section 4.23 together with an Officers' Certificate certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto; and

(f) promptly, but in any event within five (5) Business Days after the designation thereof, any designation of any Subsidiary as an Unrestricted Subsidiary by the Board of Directors of the Issuer.

Concurrently with the distribution of the financial statements required under clause (a) and (b), the Issuer shall provide notice of the date and time of a conference call with Holders to discuss such financial information, which conference calls the Issuer shall host not later than ten (10) Business Days after such distribution (provided that any conference call hosted by the Issuer which is generally available to holders of its debt or equity securities shall satisfy this covenant).

In addition, the Issuer shall furnish to prospective investors, upon their request, any information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act so long as the Notes are not freely transferable under the Securities Act or contain a restricted Securities Act legend.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the receipt by any Trustee of such shall not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein, including the Issuer's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

Section 4.04. Compliance Certificate.

(a) The Issuer shall deliver to the Trustee, within ninety (90) days after the end of each fiscal year ending after the Issue Date, a certificate from the principal executive officer, principal financial officer or principal accounting officer stating that a review of the activities of the Issuer and its Restricted Subsidiaries during the preceding fiscal year has been made under

the supervision of the signing Officer with a view to determining whether the Issuer has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to such Officer signing such certificate, that to the best of his or her knowledge the Issuer has kept, observed, performed and fulfilled each and every condition and covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions, covenants and conditions of this Indenture (or, if a Default shall have occurred, describing all such Defaults of which he or she may have knowledge).

(b) When any Default has occurred and is continuing under this Indenture, or if the Trustee or the holder of any other evidence of Indebtedness of the Issuer or any Subsidiary give any notice or takes any other action with respect to a claimed Default, the Issuer shall promptly (which shall be no more than five (5) Business Days) deliver to the Trustee by registered or certified mail or by facsimile transmission an Officers' Certificate specifying such Default and the action which the Issuer proposes to take with respect thereto.

Section 4.05. Taxes.

The Issuer shall pay, and shall cause each of its Restricted Subsidiaries to pay, prior to delinquency, all material taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate negotiations or proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders.

Section 4.06. Stay, Extension and Usury Laws.

The Issuer and each of the Guarantors covenant (to the extent that they may lawfully do so) that they shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Issuer and each of the Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenant that they shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07. Limitation on Restricted Payments.

(a) The Issuer shall not, and shall not permit any Restricted Subsidiary, directly or indirectly, to make a Restricted Payment if at the time the Issuer or such Restricted Subsidiary makes such Restricted Payment:

(1) a Default or Event of Default shall have occurred and be continuing (or would result therefrom);

(2) immediately after giving effect to such Restricted Payment, on a pro forma basis, the Consolidated Coverage Ratio is equal to or less than 2.25 to 1.0; or

(3) the aggregate amount of such Restricted Payment and all other Restricted Payments since the Issue Date (excluding Restricted Payments permitted by clauses (3), (5), (6), (7), (8), (9), (10) and (13) (other than, in the case of such clause (13), Restricted Payments in the form of dividends) of Section 4.07.(b)) would exceed the sum of (without duplication):

(i) 100% of the aggregate Net Cash Proceeds and 100% of the fair market value (as determined by the Board of Directors in good faith) of property other than cash received by the Issuer from the issuance or sale of its Capital Stock or of debt securities of the Issuer that have been converted into or exchanged for such Capital Stock (other than Disqualified Stock) subsequent to the Issue Date (other than an issuance or sale to a Subsidiary of the Issuer and other than an issuance or sale financed directly or indirectly with Indebtedness to an employee stock ownership plan or to a trust established by the Issuer or any of its Subsidiaries for the benefit of their employees) and 100% of any cash capital contribution received by the Issuer from its shareholders subsequent to the Issue Date; plus

(ii) the amount by which Indebtedness is reduced on the Issuer's consolidated balance sheet upon the conversion or exchange (other than by a Subsidiary of the Issuer) subsequent to the Issue Date of any Indebtedness convertible or exchangeable for Capital Stock (other than Disqualified Stock) of the Issuer (plus the amount of any accrued interest then outstanding on such Indebtedness to the extent the obligation to pay such interest is extinguished less the amount of any cash, or the fair market value of any other property, distributed by the Issuer upon such conversion or exchange) provided, that the foregoing amount shall not exceed the Net Cash Proceeds received by the Issuer or any Restricted Subsidiary from the sale of such Indebtedness (excluding Net Cash Proceeds from sales to a Subsidiary of the Issuer or, in the case of a sale financed directly or indirectly with Indebtedness, to an employee stock ownership plan or to a trust established by the Issuer or any of its Subsidiaries for the benefit of their employees); plus

(iii) an amount equal to the sum of (A) the net reduction in the Investments (other than Permitted Investments) made subsequent to the Issue Date by the Issuer or any Restricted Subsidiary in any Person resulting from repurchases, repayments or redemptions of such Investments by such Person, proceeds realized on the sale of such Investment and proceeds representing the return of capital (excluding dividends and distributions), in each case received by the Issuer or any Restricted Subsidiary; provided, that such amount shall not exceed the amount of Investments (excluding Permitted Investments) previously made (and treated as a Restricted Payment) by the Issuer or any Restricted Subsidiary in such Person, and (B) to the extent such Person is an Unrestricted Subsidiary, the portion (proportionate to the Issuer's equity interest in such Subsidiary) of the fair market value of the net assets of such Unrestricted Subsidiary at the time such Unrestricted Subsidiary is designated a Restricted Subsidiary or is sold; provided, that (x) such amount shall not exceed, in the case of any Unrestricted Subsidiary other than the Marcellus Midstream Owner, the amount of Investments (excluding Permitted Investments) previously made (and treated as a Restricted Payment) by the Issuer or any Restricted Subsidiary in such Unrestricted Subsidiary and (y) in the case of the Marcellus Midstream Owner, the amount of any Permitted Investments made since the Issue Date by the Issuer or any Restricted Subsidiary in the Marcellus Midstream Owner shall be deducted from such amount; and provided, further, that such amounts under this clause (iii) may not be applied toward Restricted Payments of the types described in clauses (a) and (b) of the definition thereof.

(b) The provisions of Section 4.07.(a) shall not prohibit:

(1) the payment of any dividends by the Issuer within sixty (60) days after the date of declaration thereof, if at such date of declaration such dividend would have complied with this Section 4.07 (and such payment shall be deemed to be paid on the date of payment for purposes of any calculation required by this Section 4.07;

(2) any Restricted Payment made out of the Net Cash Proceeds of a substantially concurrent sale (other than to a Subsidiary of the Issuer or an employee stock ownership plan or to a trust established by the Issuer or any of its Subsidiaries for the benefit of their employees) of Capital Stock (other than Disqualified Stock) or a cash capital contribution received by the Issuer from its shareholders; provided, that the Net Cash Proceeds from such sale or such cash capital contribution (to the extent so used for such Restricted Payment) shall be excluded from the calculation of amounts under Section 4.07(a)(3)(i);

(3) the defeasance, redemption, repurchase, retirement or other acquisition of any Subordinated Indebtedness of the Issuer or any Guarantor, Existing Unsecured Notes, Senior Debt, Junior Priority Lien Debt or Junior Lien Debt, in each case with the Net Cash Proceeds from or in exchange for Indebtedness constituting Refinancing Indebtedness permitted to be Incurred under Section 4.09 or in exchange for an issuance of Capital Stock of the Issuer (other than Disqualified Stock);

(4) the payment of any dividend or other distribution by a wholly-owned Restricted Subsidiary of the Issuer to the Issuer or another wholly-owned Restricted Subsidiary;

(5) so long as no Default or Event of Default has occurred and is continuing, Restricted Payments to effect the repurchase or other acquisition of shares of Capital Stock of the Issuer or any of its Subsidiaries from employees, former employees, directors or former directors of the Issuer or any of its Subsidiaries (or heirs, estates or other permitted transferees of such employees, former employees, directors or former directors), pursuant to the terms of the agreements (including employment agreements or management equity subscription agreements), stock options or plans (or amendments thereto) approved by the Board of Directors under which such individuals purchase or sell or are granted the option to purchase or sell, shares of such Capital Stock; provided, that the aggregate amount of such repurchases and other acquisitions (excluding amounts representing cancelation of Indebtedness) shall not exceed $2,000,000 in any 12-month period plus any unused amount permitted under this clause (5) for the immediately preceding year, but not to exceed $3,000,000 in any 12-month period;

(6) (i) repurchases, redemptions or other acquisitions of Capital Stock deemed to occur upon exercise of stock options, warrants or other convertible securities if such Capital Stock represents a portion of the exercise or exchange price thereof and (ii) repurchases or other acquisitions of Capital Stock made in lieu of withholding taxes in connection with any such exercise or exchange; provided that the aggregate amount of such repurchases, redemptions or acquisitions to satisfy federal income tax obligations shall not exceed $2,000,000 in any 12-month period;

(7) cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Issuer; provided, that any such cash payment shall not be for the purpose of evading this Section 4.07 (as determined in good faith by the Board of Directors);

(8) payments of intercompany Indebtedness that was permitted to be Incurred under this Indenture; provided, that no Default or Event of Default has occurred and is continuing or would otherwise result therefrom;

(9) payments to dissenting stockholders (i) pursuant to applicable law or (ii) in connection with the settlement or other satisfaction of legal claims made pursuant to or in connection with a consolidation, merger or transfer of assets in connection with a transaction that is not prohibited by this Indenture;

(10) repurchases, redemptions or other acquisitions of value of Existing Unsecured Notes in exchange for Junior Lien Debt to the extent permitted to be Incurred under Section 4.09 (b)(3) and/or with the Net Cash Proceeds of any such Junior Lien Debt; provided, that no Default or Event of Default has occurred and is continuing or would otherwise result immediately therefrom;

(11) repurchases, exchanges, redemptions or other acquisitions of value of Existing Unsecured Notes for consideration for all such repurchases, exchanges, redemptions or acquisitions not exceeding $70,000,000 in the aggregate since the Issue Date; provided, that no Default or Event of Default has occurred and is continuing or would otherwise result immediately therefrom; provided further that before giving effect to such repurchase, exchange, redemption or other acquisition for value, the Issuer shall have Liquidity of at least $200,000,000;

(12) repurchases, exchanges, redemptions or other acquisitions of value of the 2018 Notes for consideration for all such repurchases, exchanges, redemptions or acquisitions not exceeding $25,000,000 in the aggregate since the Issue Date; provided, that no Default or Event of Default has occurred and is continuing or would otherwise result immediately therefrom; or

(13) other Restricted Payments not to exceed $25,000,000 in the aggregate; provided, that no Default or Event of Default has occurred and is continuing or would otherwise result immediately therefrom.

(c) For purposes of determining compliance with this Section 4.07, at the time a Restricted Payment is made, the Issuer shall be entitled to divide and classify such Restricted Payment in more than one of the types of Restricted Payments described above. The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred by the Issuer or the applicable Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment. The amount of any Restricted Payment paid in cash shall be equal to its face amount. The fair market value of any assets or securities that are required to be valued at the time of such Restricted Payment by this Section 4.07 shall be evidenced by the certificate of a Responsible Officer which shall be delivered to the Trustee not later than ten (10) Business Days following the date of the making of any Restricted Payment. Such certificate shall state that such Restricted Payment is permitted together with a copy of any related resolutions of the Board of Directors.

(d) Notwithstanding anything to the contrary contained herein, the Issuer shall not, and shall not permit any Restricted Subsidiary, directly or indirectly, to (1) repurchase, exchange, redeem or otherwise acquire for value or Refinance any Existing Unsecured Notes in exchange for, or with the Net Cash Proceeds of, any Indebtedness other than (i) Junior Lien Debt in reliance on Section 4.07(b)(3), (ii) additional unsecured Indebtedness (provided that such unsecured Indebtedness does not mature prior to ninety-one (91) days after the Stated Maturity of the Notes) (in the case of each of clauses (i) and (ii), to the extent such Indebtedness is permitted to be Incurred under this Indenture) or (iii) with the issuance of Capital Stock of the Issuer (other than Disqualified Stock) or (2) repurchase, exchange, redeem or otherwise acquire for value or Refinance any Junior Priority Lien Debt, Junior Lien Debt or Senior Debt (other than the Existing Unsecured Notes) in exchange for, or with the Net Cash Proceeds of, any Senior Priority Lien Debt or Priority Lien Debt. For the avoidance of doubt, nothing in this clause (d) shall prohibit repurchases of any Existing Unsecured Notes otherwise permitted under this Section 4.07 for cash; provided, however, that any such repurchase shall also comply with Section 4.26 hereof.

Section 4.08. Limitation on Restrictions on Distributions from Restricted Subsidiaries.

The Issuer shall not, and shall not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

(a) pay dividends or make any other distributions on its Capital Stock to the Issuer or a Restricted Subsidiary or pay any Indebtedness owed to the Issuer; provided that the priority of any Preferred Stock in receiving dividends or liquidating distributions being paid on Common Stock shall not be deemed a restriction of the ability to make distributions of Capital Stock;

(b) make any loans or advances to the Issuer; provided that the subordination of loans or advances made to the Issuer or any Restricted Subsidiary to other Indebtedness Incurred by the Issuer or any Restricted Subsidiary shall not be deemed a restriction of the ability to make loans or advances; or

(c) transfer any of its Property or assets to the Issuer,

except with respect to clauses (a), (b) and (c) above:

(1) any encumbrance or restriction pursuant to an agreement in effect at or entered into on the Issue Date including, for the avoidance of doubt, the First Lien RBL Credit Agreement, this Indenture, the Notes and the Guarantees thereof, the 1.75 Lien Credit Agreement, the Second Lien Credit Agreement and the Existing Unsecured Notes;

(2) any encumbrance or restriction with respect to a Restricted Subsidiary pursuant to an agreement relating to any Indebtedness Incurred by such Restricted Subsidiary, or otherwise binding on such Restricted Subsidiary, on or prior to the date on which such Restricted Subsidiary was acquired or was so designated by the Issuer or any Restricted Subsidiary (other than Indebtedness Incurred as consideration in, or to provide all or any portion of the funds or credit support utilized to consummate, and other than any encumbrance or restriction entered into in contemplation of, the transaction or series of related transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was acquired by the Issuer) and outstanding on such date;

(3) any encumbrance or restriction pursuant to an agreement effecting a Refinancing of Indebtedness Incurred pursuant to an agreement referred to in clause (1) or (2) above; provided, that the encumbrances and restrictions with respect to such Restricted Subsidiary contained in any such Refinancing agreement or amendment are no more restrictive than the encumbrances and restrictions with respect to such Restricted Subsidiary contained in such predecessor agreements;

(4) any encumbrance or restriction with respect to a Restricted Subsidiary (or any of its Property or assets) imposed pursuant to an agreement entered into for the sale or disposition of all or substantially all the Capital Stock or assets of such Restricted Subsidiary (or the Property or assets subject to such restrictions) pending the closing of such sale or disposition;

(5) customary encumbrances and restrictions contained in agreements of the type described in the definition of the term "Permitted Business Investments";

(6) any encumbrance or restriction pursuant to an agreement relating to any Capital Lease Obligations or purchase money Indebtedness, in each case not Incurred in violation of this Indenture; provided, that with respect to purchase money Indebtedness or Capital Lease Obligations, such restrictions relate only to the Property financed with such Indebtedness;

(7) any encumbrance or restriction pursuant to provisions in agreements or instruments which prohibit the payment of dividends or the making of other distributions with respect to any Capital Stock of a Person other than on a pro rata basis;

(8) any encumbrance or restriction existing pursuant to applicable law, rule, regulation, order, approval, license, permit or similar restriction;

(9) any encumbrance or restriction pursuant to supermajority voting requirements under corporate charters, bylaws, stockholders agreements and similar documents and agreements; and

(10) any encumbrance or restriction pursuant to an instrument or agreement governing Indebtedness permitted by the terms of this Indenture to be Incurred by a Restricted Subsidiary to fund, in whole or in part, the acquisition of any Property or assets; provided such Indebtedness is repaid or otherwise refinanced in full with Refinancing Indebtedness on or prior to the date twelve (12) months after the date such Indebtedness was initially Incurred; and

and except, with respect to clause (c) only:

(1) any encumbrance or restriction consisting of customary non-assignment provisions (including provisions forbidding subletting) in leases governing leasehold interests or Farm-In Agreements or Farm-Out Agreements to the extent such provisions restrict the transfer of the lease or the Property leased thereunder;

(2) any encumbrance or restriction contained in Capital Lease Obligations, security agreements, mortgages, purchase money agreements or similar instruments securing Indebtedness of a Restricted Subsidiary to the extent such encumbrance or restriction restricts the transfer of the Property (including Capital Stock) subject to such Capital Lease Obligations, security agreements, mortgages, purchase money agreements or similar instruments;

(3) Permitted Liens or Liens securing Indebtedness otherwise permitted to be Incurred pursuant to Section 4.12 that limit the right of the Issuer or any of its Restricted Subsidiaries to dispose of the assets subject to such Lien;

(4) customary restrictions contained in asset sale agreements limiting the transfer of such assets pending the closing of such sale;

(5) customary restrictions on the subletting, assignment or transfer of any Property or asset that is subject to a lease, license, sub-license or similar contract, or the assignment or transfer of any such lease, license, sub-license or other contract;

(6) encumbrances and restrictions contained in contracts entered into in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of, or from the ability of the Issuer and the Restricted Subsidiaries to realize the value of, Property or assets of the Issuer or any Restricted Subsidiary in any manner material to the Issuer or any Restricted Subsidiary; and

(7) any encumbrance or restriction pursuant to provisions with respect to the disposition or distribution of assets or Property in operating agreements, sale-leaseback agreements, joint venture agreements, development agreements, area of mutual interest agreements and other agreements that are customary in the Oil and Gas Business and entered into in the ordinary course of business.

Section 4.09. Limitation on Indebtedness.

(a) The Issuer shall not, and shall not permit any Restricted Subsidiary to, Incur, directly or indirectly, any Indebtedness, and the Issuer will not issue any shares of Disqualified Stock and will not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock; provided, however, that the Issuer shall be entitled to Incur Indebtedness and issue shares of Disqualified Stock, and any Guarantor may Incur Indebtedness, issue shares of Disqualified Stock and issue shares of Preferred Stock to the extent permitted pursuant to Section 4.09(b).

(b) Section 4.09.(a) shall not prohibit the Incurrence of any of the following items of Indebtedness (collectively, "Permitted Indebtedness"):

(1) the Incurrence of Senior Priority Lien Debt by the Issuer or any Guarantor, including Senior Priority Lien Debt consisting of Refinancing Indebtedness Incurred to refinance, refund or replace any such Indebtedness, in each case, to the extent subject to and not prohibited by the Intercreditor Agreement; provided that immediately after giving effect to such Incurrence (and the application of proceeds therefrom) the aggregate amount of all such Indebtedness Incurred under this clause (1) and then outstanding (with outstanding letters of credit being deemed to have a principal amount equal to the stated amount thereof), when combined with the aggregate amount of all other Senior Priority Lien Obligations then outstanding, does not exceed $200,000,000 plus any Hedging Obligations constituting Senior Priority Lien Debt; provided, further, that immediately after giving effect to such Incurrence (and the application of proceeds

therefrom) the aggregate amount of all such Indebtedness Incurred under this clause (1) and then outstanding (with outstanding letters of credit being deemed to have a principal amount equal to the stated amount thereof), when combined with the aggregate amount of all other Senior Priority Lien Obligations then outstanding, with respect to the First Lien RBL Credit Agreement (including letters of credit (with outstanding letters of credit being deemed to have a principal amount equal to the stated amount thereof) and reimbursement obligations with respect thereto) and any Replacement Credit Facility, without the prior written consent of the Requisite Lead Holders, does not exceed $150,000,000 plus any Hedging Obligations constituting Senior Priority Lien Debt;

(2) the Incurrence by the Issuer and the Guarantors of (x) the Indebtedness represented by the Initial Notes and any Guarantee thereof Incurred on the Issue Date or any PIK Notes issued from time to time in respect of any PIK Interest in accordance with the terms of this Indenture, including any Guarantee thereof, and (y) to the extent subject to and not prohibited by the Intercreditor Agreement, other Priority Lien Debt, including Priority Lien Debt consisting of Refinancing Indebtedness Incurred to refinance, refund or replace Indebtedness Incurred pursuant to this clause (2), in an aggregate amount outstanding (with outstanding letters of credit being deemed to have a principal amount equal to the stated amount thereof) under this clause (2) not to exceed $300,000,000 plus the aggregate principal amount of any PIK Notes issued from time to time in respect of any PIK Interest in accordance with the terms of this Indenture;

(3) the Incurrence by the Issuer or any Guarantor of (x) Junior Priority Lien Debt represented by the 1.75 Lien Credit Agreement Incurred on the Issue Date and, to the extent subject to and not prohibited by the Intercreditor Agreement, Junior Priority Lien Debt consisting of Refinancing Indebtedness Incurred to refinance, refund or replace Indebtedness Incurred pursuant to this clause (x), (y) Junior Lien Debt represented by the Second Lien Credit Agreement after giving effect to the Transactions and, to the extent subject to and not prohibited by the Intercreditor Agreement, Junior Lien Debt consisting of Refinancing Indebtedness Incurred to refinance, refund or replace Indebtedness Incurred pursuant to the immediately preceding clause (x) or this clause (y) and (z) Junior Lien Debt, to the extent subject to and not prohibited by the Intercreditor Agreement, or Senior Debt, in each case, consisting of Refinancing Indebtedness Incurred to refinance the Existing Unsecured Notes;

(4) Indebtedness of the Issuer owing to and held by any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary owing to and held by the Issuer or any other Restricted Subsidiary; provided, that (i) any subsequent issuance or transfer of any Equity Interests which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of such Indebtedness (other than to the Issuer or a Restricted Subsidiary) shall be deemed, in each case, to constitute the Incurrence of such Indebtedness by the obligor thereon not permitted by this clause (4), (ii) if the obligor with respect to such Indebtedness is not the Issuer nor a Guarantor and the Issuer or any Guarantor is the obligee, such Indebtedness shall be subject to the limitation set forth in clause (a)(iv) of the definition of "Permitted Investment" and (iii) if the Issuer or a Guarantor is the obligor on such Indebtedness, such Indebtedness shall be expressly subordinated to the prior payment in full in cash of all Obligations of such obligor pursuant to a subordinated intercompany note;

(5) Indebtedness (other than Indebtedness Incurred pursuant to clauses (1), (2) or (3) of this Section 4.09(b)) outstanding on the Issue Date after giving effect to the Transactions;

(6) Permitted Acquisition Indebtedness;

(7) Refinancing Indebtedness in respect of Indebtedness Incurred pursuant to clauses (5), (6) or (12) of this Section 4.09.(b) or this clause (7); provided, that to the extent such Refinancing Indebtedness directly or indirectly Refinances Indebtedness of a Subsidiary Incurred pursuant to clause (6), such Refinancing Indebtedness shall be Incurred only by such Subsidiary;

(8) Hedging Obligations of the Issuer or any Restricted Subsidiary pursuant to contracts entered into in the ordinary course of business for the purpose of limiting risks that arise in the ordinary course of business of the Issuer and its Restricted Subsidiaries;

(9) the Incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, payment obligations in connection with health or other types of social security benefits, unemployment or other insurance or self-insurance obligations, reclamation, statutory obligations, banks' acceptances and obligations in respect of performance, bid and surety bonds and completion guarantees provided by the Issuer or any Restricted Subsidiary in the ordinary course of business;

(10) Indebtedness of the Issuer or any Restricted Subsidiary (i) arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business and (ii) pursuant to Cash Management Obligations Incurred in the ordinary course of business;

(11) Non-Recourse Purchase Money Indebtedness at any time outstanding not to exceed $25,000,000;

(12) any Guarantee by the Issuer or any Guarantor of Indebtedness or other obligations of the Issuer or any Guarantor so long as the Incurrence of such Indebtedness Incurred by the Issuer or such Guarantor is permitted to be Incurred under this covenant, or any Guarantee by the Issuer or any Guarantor of Indebtedness of the Issuer so long as the Incurrence of such Indebtedness by the Issuer is permitted under this covenant;

(13) in-kind obligations relating to net oil or natural gas balancing positions arising in the ordinary course of business

(14) Indebtedness of the Issuer or any Restricted Subsidiary represented by Capital Lease Obligations, mortgage financings or purchase money obligations Incurred to finance all or any part of the design, development, installation, construction, purchase or lease of, or repairs, improvements or additions to, property, plant or equipment used in the business of the Issuer or any of its Restricted Subsidiaries not more than one-hundred eighty (180) days after the later of the acquisition, completion of construction, repair, improvement, addition or commencement of full operation of such property, plant or equipment, in an aggregate principal amount which, in an aggregate principal amount outstanding, taken together with all Refinancing Indebtedness in respect thereof, not to exceed at any time outstanding $20,000,000;

(15) Permitted Marketing Obligations;

(16) Indebtedness of the Issuer or any Restricted Subsidiary consisting of the financing of insurance premiums in customary amounts consistent with the operations and business of the Issuer and the Restricted Subsidiaries;

(17) Guarantees by the Issuer of the obligations of EOC to pay the BG Development Costs under Section 2.3 of the BG Joint Development Agreement with respect to Oil and Gas Properties owned by the Issuer or the Guarantors or any of the Issuer's Unrestricted Subsidiaries;

(18) Guarantees by the Issuer of the obligations of certain of its Subsidiaries to pay such Subsidiaries' share of the Marcellus Development Costs with respect to the Marcellus JV Oil and Gas Assets in accordance with the terms of the Marcellus JV Documents;

(19) Indebtedness arising from agreements of the Issuer or a Restricted Subsidiary providing for indemnification, adjustment of purchase price or similar obligations, in each case, Incurred or assumed in connection with the disposition of any business or assets of the Issuer or any business, assets or Capital Stock of a Restricted Subsidiary, other than Guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition; provided that:

(i) the maximum aggregate liability in respect of all such Indebtedness shall at no time exceed the gross proceeds, including non-cash proceeds (the Fair Market Value of such non-cash proceeds being measured at the time received and without giving effect to subsequent changes in value), actually received by the Issuer and its Restricted Subsidiaries in connection with such disposition; and

(ii) such Indebtedness is not reflected on the balance sheet of the Issuer or any of its Restricted Subsidiaries (contingent obligations referred to in a footnote to financial statements and not otherwise reflected on the balance sheet will not be deemed to be reflected on such balance sheet for purposes of this clause (19)); and

(20) Indebtedness of, or Disqualified Stock issued by, the Issuer or any Restricted Subsidiary or Preferred Stock issued by any Restricted Subsidiary not otherwise permitted pursuant to this clause (b), in an aggregate principal amount not to exceed at any time outstanding $20,000,000; and

(21) Indebtedness arising from Guarantees by the Issuer or any Restricted Subsidiary of Indebtedness Incurred in connection with Permitted Business Investments at any time outstanding not to exceed $60,000,000;

(c) Notwithstanding the foregoing, neither the Issuer nor any Guarantor shall Incur any Indebtedness pursuant to Section 4.09.(b) if the proceeds thereof are used, directly or

indirectly, to Refinance any Subordinated Indebtedness of the Issuer or a Guarantor unless such Indebtedness shall be subordinated to the Indebtedness or to the applicable Guarantee to at least the same extent as such Subordinated Indebtedness.

(d) For purposes of determining compliance with this Section 4.09: (1) all Indebtedness outstanding under the First Lien RBL Credit Agreement or under any Replacement Credit Facility shall be deemed Incurred under Section 4.09.(b)(i)(1); (2) in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the types of Indebtedness described above, the Issuer, in its sole discretion, shall classify such item of Indebtedness (or any portion thereof) at the time of Incurrence and may later reclassify such item of Indebtedness in any manner that complies with this Section 4.09 and shall only be required to include the amount and type of such Indebtedness in one of the above clauses; (3) at the time of Incurrence, the Issuer shall be entitled to divide and classify (or later classify, reclassify or re-divide in whole or in part in its sole discretion) an item of Indebtedness in more than one of the types of Indebtedness described above; (4) Guarantees of or obligations in respect of letters or credit relating to Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included; (5) if obligations in respect of letters of credit are Incurred pursuant to the First Lien RBL Credit Agreement and are being treated as Incurred pursuant to Section 4.09.(b)(i)(1) and the letters of credit relate to other Indebtedness, then such other Indebtedness shall not be included; (6) the amount of Indebtedness issued at a price that is less than the principal amount thereof shall be equal to the amount of the liability in respect thereof determined in accordance with GAAP; and (7) Indebtedness of any Person existing at the time such Person becomes a Restricted Subsidiary shall be deemed to have been Incurred by the Issuer and the Restricted Subsidiary at the time such Person becomes a Restricted Subsidiary.

(e) For purposes of determining compliance with any Dollar-denominated restriction on the Incurrence of Indebtedness where the Indebtedness Incurred is denominated in a different currency, the amount of such Indebtedness shall be the Dollar Equivalent determined on the date of the Incurrence of such Indebtedness; provided, however, that if any such Indebtedness denominated in a different currency is subject to a Currency Agreement with respect to Dollars covering all principal, premium, if any, and interest payable on such Indebtedness, the amount of such Indebtedness expressed in Dollars shall be as provided in such Currency Agreement. The principal amount of any Refinancing Indebtedness Incurred in the same currency as the Indebtedness being Refinanced shall be the Dollar Equivalent of the Indebtedness Refinanced, except to the extent that (1) such Dollar Equivalent was determined based on a Currency Agreement, in which case the Refinancing Indebtedness shall be determined in accordance with the preceding sentence, and (2) the principal amount of the Refinancing Indebtedness exceeds the principal amount of the Indebtedness being Refinanced, in which case the Dollar Equivalent of such excess shall be determined on the date such Refinancing Indebtedness is Incurred.

Section 4.10. Fundamental Changes and Dispositions.

(a) The Issuer will not, nor will it permit any of its Restricted Subsidiaries to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or Dispose of (in one transaction or in a series of transactions, including any Asset Sale) all or any substantial part of its assets, or any of its Oil and Gas Properties or any of the Equity Interests of any Restricted Subsidiary (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except that, the Issuer or any Restricted Subsidiary may sell Hydrocarbons produced from its Oil and Gas Properties in the ordinary course of business, and if at the time thereof and immediately after giving effect thereto no Default or Event of Default shall have occurred and be continuing:

(1) any Restricted Subsidiary may merge into the Issuer in a transaction in which the Issuer is the surviving entity;

(2) (i) the Issuer may merge into any Guarantor or any Guarantor may merge into any other Guarantor (provided that, in the case of the Issuer, the Issuer shall be the surviving entity); (ii) any Non-Guarantor Restricted Subsidiary may merge into any other Non-Guarantor Restricted Subsidiary and (iii) any Subsidiary that is not a Guarantor may merge into the Issuer or any Guarantor in a transaction in which the surviving entity is the Issuer or such Guarantor;

(3) any Restricted Subsidiary may sell, transfer, lease or otherwise dispose of its assets to the Issuer or to another Restricted Subsidiary; provided, that the aggregate fair market value of all assets sold, transferred, leased or otherwise disposed of by the Issuer or any Guarantor, other than to the Issuer or any other Guarantor, during the term of this Indenture pursuant to this clause (3) shall not exceed $10,000,000 in the aggregate;

(4) the Issuer may sell, transfer, lease or otherwise dispose of its assets to any Guarantor;

(5) any Restricted Subsidiary may liquidate or dissolve if the Issuer determines in good faith that such liquidation or dissolution is in the best interests of the Issuer and such Restricted Subsidiary and is not materially disadvantageous to interests of the Holders;

(6) the Issuer or any Restricted Subsidiary may sell, transfer, lease or otherwise dispose of equipment and related items in the ordinary course of business, that are obsolete or no longer necessary in the business of the Issuer or any of its Restricted Subsidiaries or that is being replaced by equipment of comparable value and utility;

(7) subject to clause (b) below, to the extent permitted under the terms of the First Lien RBL Credit Agreement and the other Senior Priority Lien Documents, the Issuer or any Restricted Subsidiary may Dispose of Oil and Gas Properties (whether pursuant to a Disposition of all, but not less than all, of the Equity Interests of any Restricted Subsidiary or otherwise) so long as:

(i) the Issuer or such Restricted Subsidiary receives consideration (including by way of relief from, or by any Person assuming responsibilities for any liabilities, contingent or otherwise) at the time of such Asset Sale at least equal to the fair market value (including as to the value of all non-cash consideration), as determined in good faith by the Board of Directors or an executive officer of the Issuer or such Restricted Subsidiary with the responsibility for such transaction, which determination shall be conclusive evidence of compliance with this provision, of the shares and assets subject to such Asset Sale; and

(ii) unless such Disposition is in connection with a joint development arrangement, drilling agreement or similar arrangement contemplating a contribution or conveyance of Oil and Gas Properties in exchange for a commitment to bear future development costs in respect of such Oil and Gas Properties, at least 85% of the consideration thereof received by the Issuer or such Restricted Subsidiary is in the form of cash or Cash Equivalents; provided that the following are deemed to be cash or Cash Equivalents: (i) any liabilities (as shown on the Issuer's or such Restricted Subsidiary's most recent

balance sheet) of the Issuer or any Restricted Subsidiary (other than (1) liabilities that are subordinated to the Obligations, (2) Junior Priority Lien Obligations, (3) Junior Lien Obligations or (4) Senior Debt) that are assumed by the transferee of any such assets pursuant to a customary novation agreement or similar agreement that releases the Issuer or such Restricted Subsidiary from all further liability; (ii) securities received by the Issuer or any Restricted Subsidiary from the transferee that are converted within one-hundred eighty (180) days by the Issuer or such Restricted Subsidiary into cash, to the extent of cash received in that conversion; and (iii) accounts receivable of a business retained by the Issuer or any Restricted Subsidiary, as the case may be, following the sale of such business, provided that such accounts receivable (c) are not past due more than thirty (30) days and (y) do not have a payment greater than ninety (90) days from the date of the invoice creating such accounts receivable.

provided, that for purposes of this clause (a)(7), the Issuer or any Guarantor may not sell, transfer, lease, exchange, abandon or otherwise Dispose of (in one transaction or a series of related transactions) all or substantially all of the Oil and Gas Properties (whether pursuant to a Disposition of Equity Interests of a Restricted Subsidiary or otherwise) without the prior written consent of all of the Holders.

(8) the Issuer may consummate the following Dispositions:

(i) the sale, transfer or assignment by the Issuer, EXCO PA, EXCO WV or any other Restricted Subsidiary of an undivided interest in Oil and Gas Properties acquired by the Issuer, EXCO PA, EXCO WV or any other Restricted Subsidiary in the Appalachian Area to the extent required pursuant to and in accordance with the right of first refusal provisions of the Marcellus JV Documents; and

(ii) the sale, transfer or assignment by the Issuer, EOC or any other Restricted Subsidiary of an undivided interest in Oil and Gas Properties acquired by the Issuer, EOC or any other Restricted Subsidiary in the East Texas/North Louisiana Area to the extent required pursuant to and in accordance with the right of first refusal provisions of the BG Joint Development Agreement.

(b) Within three hundred sixty (360) days after the Issuer or any Restricted Subsidiary receives Net Cash Proceeds in respect of any Asset Sale or Disposition of any Oil and Gas Properties at any time (whether pursuant to a Disposition of Equity Interests of a Restricted Subsidiary permitted pursuant to clause (a) above or otherwise) (the "Application Period"), the Issuer or such Restricted Subsidiary, at its option, may apply such Net Cash Proceeds to:

(1) acquire property, plant and equipment or any business entity used or useful in carrying on the business of the Issuer and its Restricted Subsidiaries or to improve or replace any existing property of the Issuer and its Restricted Subsidiaries used or useful in carrying on the business of the Issuer and its Restricted Subsidiaries (the foregoing, collectively, "replacement assets"), or to make capital expenditures in Oil and Gas Properties; provided, that any Net Cash Proceeds attributable to a Disposition of an asset owned by the Issuer or any Guarantor must be reinvested in replacement assets owned by the Issuer or one or more Guarantors or to make capital expenditures in Oil and Gas Properties owned by the Issuer or one or more Guarantors;

(2) make an offer (an "Asset Sale Offer") an offer to all Holders of the Notes in accordance with the procedures set forth in Section 3.09 hereof, and, if required by the terms of any Senior Priority Lien Debt and any other Priority Lien Debt, to the holders of such Senior Priority Lien Debt and any Priority Lien Debt, to purchase the maximum aggregate principal amount of Notes and such Senior Priority Lien Debt and any Priority Lien Debt that may be purchased out of the Net Cash Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof, plus accrued and unpaid interest, if any, to but excluding the date fixed for the closing of such offer, on a pro rata basis, in accordance with the procedures set forth in this Indenture and, if applicable, the other documents governing the applicable Senior Priority Lien Debt and any Priority Lien Debt.;

(3) to permanently repay, redeem or repurchase (and permanently reduce the commitments with respect to) any Senior Priority Lien Debt and other outstanding Senior Priority Lien Obligations; or

(4) any combination of the foregoing.

(c) The Issuer will not, nor will it permit any of its Restricted Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Issuer and its Restricted Subsidiaries on the date of execution of this Indenture and businesses reasonably related thereto.

Section 4.11. Transactions with Affiliates.

(a) The Issuer will not, nor will it permit any of its Restricted 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 (an "Affiliate Transaction"), (1) except (i) in the ordinary course of business at prices and on terms and conditions not less favorable to the Issuer or such Restricted Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (ii) transactions between or among the Issuer and any Guarantor not involving any other Affiliate, (iii) any Restricted Payment permitted by Section 4.07 or (iv) Permitted Investments of the kind referred to in clauses (a)(i) and (a)(ii) of the definition thereof, (2) unless (i) the terms of the Affiliate Transaction are no less favorable to the Issuer or such Restricted Subsidiary than those that could be obtained at the time of the Affiliate Transaction in arm's-length dealings with a Person who is not an Affiliate and if, in the good faith judgment of the Board of Directors, such Affiliate Transaction is commercially reasonable and otherwise fair to the Issuer or the relevant Restricted Subsidiary from a financial point of view; and (ii) (x) the Issuer delivers to the Trustee with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration to or from the Issuer or a Restricted Subsidiary in excess of $10,000,000, an Officers' Certificate certifying that such Affiliate Transaction complies with the requirements of clause (1) above, and (y) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration to or from the Issuer or a Restricted Subsidiary in excess of $25,000,000, a majority of the Disinterested Members of the Board of Directors (or, if there is only one Disinterested Member, such Disinterested Member) have determined that the criteria set forth in clause (1) are satisfied with respect to such Affiliate Transaction(s) and have approved such Affiliate Transaction(s), as evidenced by a resolution delivered to the Trustee and certified by an Officers' Certificate as having been adopted by the Board of Directors.

(b) Section 4.11.(a) shall not prohibit or apply to:

(1) any Investment by the Issuer in any Guarantor, by any Guarantor in the Issuer or by any Guarantor in another Guarantor or other Restricted Payment between the Issuer or any Guarantor or between any Guarantor and another Guarantor;

(2) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options and stock ownership plans approved by the Board of Directors;

(3) loans or advances to officers or employees in the ordinary course of business in accordance with the past practices of the Issuer or the Restricted Subsidiaries, in each case, only as permitted by Section 402 of the Sarbanes-Oxley Act of 2002;

(4) the payment of reasonable fees to directors of the Issuer and the Restricted Subsidiaries who are not employees of the Issuer or the Restricted Subsidiaries, the reimbursement of reasonable out-of-pocket expenses incurred by, directors of the Issuer and the Restricted Subsidiaries in attending meetings of such directors and indemnification payments made to officers, directors and employees of the Issuer or any Subsidiary pursuant to charter, bylaw, statutory or contractual provisions;

(5) the issuance or sale of any Capital Stock (other than Disqualified Stock) of the Issuer to, or the receipt by the Issuer of any capital contribution from, its stockholders or Affiliates;

(6) any agreement as in effect on the Issue Date (including each of the agreements in respect of the Transactions) or any amendments or other modifications, renewals or extensions of any such agreement (so long as such amendments or other modifications, renewals or extensions are not materially less favorable to the Issuer or the Restricted Subsidiaries) and the transactions evidenced thereby;

(7) transactions contemplated by the Marcellus JV Documents, the BG JV Documents or the Bluescape Agreement, in each case as in effect on the Issue Date, in the ordinary course of business and otherwise in compliance with the terms of this Indenture, which are fair to the Issuer and its Restricted Subsidiaries in the reasonable determination of the Board of Directors of the Issuer, an executive officer of the Issuer or an executive officer of such Restricted Subsidiary with responsibility for such transaction (whose determination shall be conclusive evidence of compliance with this provision) and amendments, modifications, supplements, extensions or renewals of such agreements from time to time, so long as any such amendment, modification, supplement, extension or renewal is not more disadvantageous to the Holders in any material respect in the good faith judgment of the Board of Directors of the Issuer, when taken as a whole, than the terms of such agreements in effect on the Issue Date;

(8) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services in each case in the ordinary course of business and otherwise in compliance with this Indenture, which are fair to the Issuer and its Restricted Subsidiaries, in the reasonable determination of the Board of Directors of the Issuer, an executive officer of the Issuer or an executive officer of such Restricted Subsidiary with responsibility for such transaction (whose determination shall be conclusive evidence of compliance with this provision) or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(9) transactions between the Issuer or any Restricted Subsidiary and any Person, a director of which is also a director of the Issuer and such director is the sole cause for

such Person to be deemed an Affiliate of the Issuer or any Restricted Subsidiary, provided, however, that such director shall abstain from voting as a director of the Issuer on any matter involving such other Person;

(10) any transaction in which the Issuer or any of its Restricted Subsidiaries as the case may be, delivers to the Trustee a written opinion from an Independent Qualified Party to the effect that such Affiliate Transaction is fair, from a financial standpoint, to the Issuer and the Restricted Subsidiaries or is not less favorable to the Issuer and the Restricted Subsidiaries than could reasonably be expected to be obtained at the time in an arm's-length transaction with a Person who was not an Affiliate;

(11) guarantees of performance by the Issuer and its Restricted Subsidiaries of the Issuer's Unrestricted Subsidiaries in the ordinary course of business, except for guarantees of Indebtedness in respect of borrowed money; or

(12) if such Affiliate Transaction is with a Person in its capacity as a holder of Indebtedness or Capital Stock of the Issuer or any Restricted Subsidiary where such Person is treated no more favorably than the holders of Indebtedness or Capital Stock of the Issuer or any Restricted Subsidiary.

Section 4.12. Liens.

The Issuer shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, Incur or permit to exist any Lien of any nature whatsoever on any of its Properties (including Capital Stock of a Restricted Subsidiary), whether owned at the Issue Date or thereafter acquired, other than Permitted Liens.

Section 4.13. Corporate Existence.

Subject to Section 4.10 hereof, the Issuer shall do or cause to be done all things necessary to preserve and keep in full force and effect (i) its company existence (for the avoidance of doubt, the Issuer may convert into a limited liability company, provided that there is a corporate co-issuer entity), and the corporate, partnership, limited liability company or other existence of each of its Restricted Subsidiaries, in accordance with the respective Organizational Documents (as the same may be amended from time to time) of the Issuer or any such Restricted Subsidiary and (ii) the rights (charter and statutory), licenses and franchises of the Issuer and its Restricted Subsidiaries; provided that the Issuer shall not be required to preserve any such right, license or franchise, or the corporate, partnership, limited liability company or other existence of any of its Restricted Subsidiaries, if the Issuer in good faith shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Issuer and its Restricted Subsidiaries, taken as a whole.

Section 4.14. Offer to Repurchase Upon Change of Control.

(a) If a Change of Control occurs after the Issue Date, unless, prior to or concurrently with the time the Issuer is required to make a Change of Control Offer, the Issuer has previously or concurrently mailed a redemption notice with respect to all the outstanding Notes as described under Section 3.07 or Section 11.01 hereof, the Issuer shall make an offer to purchase all of the Notes pursuant to the offer described below (the "Change of Control Offer") at a price in cash (the "Change of Control Payment") equal to 101% of the aggregate principal amount thereof (including any PIK Notes) plus accrued and unpaid interest, if any, to, but excluding the date of purchase, subject to the right of Holders of record on the relevant Record

Date to receive interest due on the relevant Interest Payment Date. No later than thirty (30) days following any Change of Control, the Issuer shall send notice of such Change of Control Offer by first-class mail, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the applicable Note Register, with the following information:

(1) that a Change of Control Offer is being made pursuant to this Section 4.14 and that all Notes properly tendered pursuant to such Change of Control Offer shall be accepted for payment by the Issuer;

(2) the purchase price and the purchase date, which shall be no earlier than 20 Business Days nor later than sixty (60) days from the date such notice is mailed (the "Change of Control Payment Date");

(3) that any Note not properly tendered shall remain outstanding and continue to accrue interest;

(4) that unless the Issuer defaults in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest on the Change of Control Payment Date;

(5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer shall be required to surrender such Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of such Notes completed, to the paying agent specified in the notice at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(6) that Holders of the Notes shall be entitled to withdraw their tendered Notes and their election to require the Issuer to purchase such Notes, provided that the applicable paying agent receives, not later than the expiration time of the Change of Control Offer, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder of the Notes, the principal amount of Notes tendered for purchase, and a statement that such Holder is withdrawing its tendered Notes and its election to have such Notes purchased;

(7) that if the Issuer is redeeming less than all of the Notes, the Holders of the remaining Notes shall be issued new Notes and such new Notes shall be equal in principal amount to the unpurchased portion of the Notes surrendered. The unpurchased portion of the Notes must be equal to $2,000 or an integral multiple of $1,000 in excess thereof (or if a PIK Note Payment has been made, the Notes shall be in minimum denominations of $1.00 and any integral multiple of $1.00 in excess thereof);

(8) if such notice is delivered prior to the occurrence of a Change of Control, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control; and

(9) the other instructions, as determined by the Issuer, consistent with this Section 4.14, that a Holder must follow.

The Issuer shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of Notes pursuant to a Change of Control Offer. To the extent that the

provisions of any securities laws or regulations conflict with the provisions of this Section 4.14, the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.14 by virtue thereof.

(b) On the Change of Control Payment Date, the Issuer shall, to the extent permitted by law,

(1) accept for payment all Notes issued by it or portions thereof properly tendered pursuant to the Change of Control Offer,

(2) deposit with the applicable Paying Agent an amount equal to the aggregate Change of Control Payment in respect of all Notes or portions thereof so tendered, and

(3) deliver, or cause to be delivered, to the Trustee for cancellation the Notes so accepted together with an Officers' Certificate to the Trustee stating that such Notes or portions thereof have been tendered to and purchased by the Issuer.

(c) The Issuer shall not be required to make a Change of Control Offer if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.14 applicable to a Change of Control Offer made by the Issuer and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer. Notwithstanding anything to the contrary herein, a Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(d) If Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in a Change of Control Offer and the Issuer, or any third party making a Change of Control Offer in lieu of the Issuer as described in clause (c) above, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Issuer or such third party shall have the right, upon not less than thirty (30) nor more than sixty (60) days' prior notice, given not more than thirty (30) days following such purchase pursuant to the Change of Control Offer described above, to redeem all Notes that remain outstanding following such purchase at a price in cash equal to the applicable Change of Control Payment plus, to the extent not included in the Change of Control Payment, accrued and unpaid interest, if any, thereon, to the date of redemption.

(e) Other than as specifically provided in this Section 4.14, any purchase pursuant to this Section 4.14 shall be made pursuant to the provisions of Sections 3.02, 3.05 and 3.06 hereof.

Section 4.15. Limitation on Guarantees of Indebtedness by Restricted Subsidiaries.

If the Issuer or any of its Restricted Subsidiaries (x) acquires or creates any wholly-owned Domestic Subsidiary (other than an Unrestricted Subsidiary) (y) acquires or creates a Restricted Subsidiary after the Issue Date and, for purposes of this clause (y), that Subsidiary (a) guarantees any Indebtedness of the Issuer or any Guarantor under any Credit Facility or (b) is a Domestic Subsidiary and becomes an obligor with respect to any Indebtedness under any Credit Facility, then, in the case of either of the foregoing clauses (x) or (y), within ten (10) Business Days after the date that Subsidiary was acquired or created or on which it became obligated with respect to such Indebtedness, the Issuer shall (1) cause that Subsidiary to execute and deliver a supplemental indenture to this Indenture, the form of which

is attached as Exhibit D hereto, providing for a Guarantee of the Notes by such Subsidiary, (2) following the Discharge of Senior Priority Lien Obligations, deliver to the Collateral Trustee stock certificates or other instruments representing all the Equity Interests of such Restricted Subsidiary and stock powers and instruments of transfer, endorsed in blank, with respect to such stock certificates or other instruments, or, if any Equity Interests pledged pursuant to such Security Instrument are uncertificated securities, confirmation and evidence satisfactory to the Trustee that the security interest in such uncertificated securities has been transferred to and perfected by the Trustee in accordance with the Uniform Commercial Code, (3) deliver to the Collateral Trustee all agreements, deeds of trust, mortgages, documents and instruments, including Uniform Commercial Code Financing Statements (Form UCC-1), required by law or reasonably requested by the Trustee to be executed, filed, registered or recorded to create or perfect the Liens on the Property of such Subsidiary (except to the extent not required under the applicable Security Instrument), (4) deliver to the Trustee Uniform Commercial Code searches, all dated reasonably close to the date of the Collateral Trust Joinder Agreement and in form and substance satisfactory to the Trustee, and evidence reasonably satisfactory to the Trustee that any Liens indicated in such Uniform Commercial Code searches are Liens permitted pursuant to Section 4.12 or have been released, (5) deliver to the Trustee the corporate resolutions or similar approval documents of such Restricted Subsidiary approving the execution and delivery of the Collateral Trust Joinder Agreement and the performance by such Restricted Subsidiary of the Security Instruments, the Guarantee and any other Note Document to which it is a party and (6) deliver to the Trustee a legal opinion reasonably acceptable to the Trustee, opining favorably on the execution, delivery and enforceability of the Note Documents to which such Restricted Subsidiary is a party, and the grant and perfection of the security interest or trust lien purported to be made or effected by any such Note Document and otherwise being in form and substance reasonably satisfactory to the Trustee and its counsel. For the avoidance of doubt, the Issuer shall cause any Subsidiary which Guarantees obligations under any Senior Priority Lien Document to contemporaneously become a Guarantor hereunder. The Issuer and each Guarantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Guarantor hereunder. This Indenture shall be fully effective as to any Guarantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Guarantor hereunder.

Section 4.16. Limitation on Sale/Leaseback Transaction.

The Issuer shall not, and shall not permit any Restricted Subsidiary to, enter into any Sale/Leaseback Transaction with respect to any Property unless (a) the Issuer or such Restricted Subsidiary would be entitled to (1) Incur Indebtedness in an amount equal to the Attributable Debt with respect to such Sale/Leaseback Transaction pursuant to Section 4.09 and (2) create a Lien on such Property securing such Attributable Debt; (b) the net proceeds received by the Issuer or any Restricted Subsidiary in connection with such Sale/Leaseback Transaction are at least equal to the fair market value (as determined by the Board of Directors) of such Property and (c) the Issuer applies the proceeds of such transaction in compliance with Section 4.10.

Section 4.17. Payment for Consent.

The Issuer shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of any Note Document unless in the case of any consent, waiver or amendment of this Indenture or the Notes, such consideration is offered to be paid and is paid to all Holders that are QIBs, who, upon request, confirm that they are QIBs, that consent, waive or agree to amend any comparable provisions of this Indenture and the Notes.

Section 4.18. Existence; Conduct of Business.

The Issuer will, and will cause each Restricted Subsidiary to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution that is otherwise permitted under this Indenture.

Section 4.19. Insurance.

The Issuer will, and will cause each Restricted Subsidiary and use commercially reasonable efforts to cause each operator of Oil and Gas Properties to, maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. The Issuer will cause any insurance policies covering any such property to be endorsed to include the Collateral Trustee as loss payee with respect to all property/casualty policies and additional insured with respect to all liability policies. Within ten (10) days after the Issue Date, the Issuer and the Guarantors shall deliver to the Trustee, insurance certificates and endorsements as contemplated by Section 4.19.

Section 4.20. Operation and Maintenance of Properties.

The Issuer will, and will cause each of its Restricted Subsidiaries to:

(i) operate its Oil and Gas Properties and other material Properties or cause such Oil and Gas Properties and other material Properties to be operated in a careful and efficient manner in accordance with the practices of the industry and in compliance with all applicable contracts and agreements and in compliance with all Governmental Requirements, including, without limitation, applicable pro ration requirements and Environmental Laws, and all applicable laws, rules and regulations of every other Governmental Authority from time to time constituted to regulate the development and operation of its Oil and Gas Properties and the production and sale of Hydrocarbons and other minerals therefrom, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(ii) keep and maintain all Property material to the conduct of its business in good working order and condition (ordinary wear and tear excepted); preserve, maintain and keep in good repair, working order and efficiency (ordinary wear and tear and obsolescence excepted) all of its material Oil and Gas Properties and other material Properties, including, without limitation, all equipment, machinery and facilities;

(iii) promptly pay and discharge, or make reasonable and customary efforts to cause to be paid and discharged, all delay rentals, royalties, expenses and indebtedness accruing under the leases or other agreements affecting or pertaining to its Oil and Gas Properties and will do all other things necessary to keep materially unimpaired its rights with respect thereto and prevent any forfeiture thereof or default thereunder, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(iv) promptly perform, or make reasonable and customary efforts to cause to be performed, in accordance with industry standards, the obligations required by each and all of the assignments, deeds, leases, sub-leases, contracts and agreements affecting its interests in its Oil and Gas Properties and other material Properties, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(v) operate its Oil and Gas Properties and other material Properties or cause or make reasonable and customary efforts to cause such Oil and Gas Properties and other material Properties to be operated in accordance with the practices of the industry and in material compliance with all applicable contracts and agreements and in compliance in all material respects with all Governmental Requirements; and to the extent that the Issuer or a Guarantor is not the operator of any Property, the Issuer shall use commercially reasonable efforts to cause the operator to comply with this Section 4.20.

Section 4.21. Books and Records; Inspection Rights.

The Issuer will, and will cause each Restricted Subsidiary to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities.

Section 4.22. Compliance with Laws.

The Issuer will, and will cause each Restricted Subsidiary to, comply with all Governmental Requirements applicable to it, its Oil and Gas Business and its Property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 4.23. Reserve Reports.

(a) On or before March 15th of each year, commencing March 15, 2018, the Issuer shall furnish to the Trustee and the Holders a Reserve Report, which Reserve Report shall be prepared or audited by one or more Approved Petroleum Engineers.

(b) With the delivery of each Reserve Report, the Issuer shall provide to the Trustee and the Holders a certificate from a Responsible Officer certifying that to his knowledge, after reasonable investigation, in all material respects: (1) the information contained in the Reserve Report and any other information delivered in connection therewith is based on information that was prepared in good faith based upon assumptions believed to be reasonable at the time, (2) the Issuer or its Subsidiaries owns good and defensible title to the Proved Reserves evaluated in such Reserve Report and such Proved Reserves are free of all Liens except for Liens permitted by Section 4.12, (3) except as set forth on an exhibit to the certificate, on a net basis there are no material gas imbalances, take or pay or other prepayments with respect to its Oil and Gas Properties evaluated in such Reserve Report which would require the Issuer or any Restricted Subsidiary to deliver Hydrocarbons either generally or produced from such Oil and Gas Properties at some future time without then or thereafter receiving full payment therefor, (4) none of the Issuer's and its Subsidiaries' Proved Reserves have been sold since the date of the last Reserve Report except as set forth on an exhibit to the certificate, which certificate shall list all of its Proved Reserves sold and in such detail as reasonably required by the Trustee and (5) attached thereto is a schedule of the Proved Reserves evaluated by such Reserve Report that are Mortgaged Properties.

(c) On or before March 15th of each year, commencing on March 15, 2018, the Issuer shall furnish to the Trustee and the Holders a Collateral Coverage Reserve Report.

Section 4.24. Liens on Collateral and Additional Property.

(a) The Issuer and each of the Guarantors shall do or cause to be done all acts and things that may be required to assure and confirm that the Collateral Trustee holds, for the benefit of the holders of Priority Lien Obligations, duly created and enforceable and perfected Priority Liens upon the Collateral (subject to the Intercreditor Agreement and Permitted Prior Liens) (including any acquired

Property or other Property required by any Priority Lien Document to become Collateral after the Issue Date), in each case, as contemplated by, and with the Lien priority required under, the Priority Lien Documents, and in connection with any merger, consolidation or sale of assets of the Issuer or any Guarantor, the property and assets of the Person which is consolidated or merged with or into any Issuer or any Guarantor, to the extent that they are property or assets of the types which would constitute Collateral under the Security Instruments, shall be treated as after-acquired property and the Issuer or such Guarantor shall take such action as may be reasonably necessary to cause such property and assets to be made subject to the Priority Liens, in the manner and to the extent required under the Priority Lien Documents.

(b) Upon the request of the Collateral Trustee or any Priority Lien Representative at any time and from time to time, the Issuer and each of the Guarantors shall promptly execute, acknowledge and deliver such Security Instruments, instruments, certificates, financing statements, notices and other documents, and take such other actions as shall be required, or that the Collateral Trustee may reasonably request, to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred, in each case as contemplated by the Priority Lien Documents for the benefit of the holders of Priority Lien Obligations; provided that no such Security Instrument, instrument or other document shall be materially more burdensome upon the Issuer and the Guarantors than the Priority Lien Documents executed and delivered by the Issuer and the Guarantors in connection with the making of the Notes on the Issue Date.

(c) From and after the Issue Date, if the Issuer or any Guarantor acquires any Property that constitutes (x) Collateral or (y) collateral for the Senior Priority Lien Debt, the Junior Priority Lien Debt or the Junior Lien Debt, if and to the extent that any Priority Lien Document, Senior Priority Lien Document, Junior Priority Lien Document or Junior Lien Document, as applicable, requires any supplemental security document for such collateral or other actions to achieve a perfected Lien on such collateral, the Issuer shall, or shall cause the applicable Guarantor to, promptly (but not in any event no later than the date that is ten (10) Business Days after which such supplemental security documents are executed and delivered (or other action taken) under such Priority Lien Document, Senior Priority Lien Documents, Junior Priority Lien Document or Junior Lien Documents, as applicable), to the extent permitted by applicable law, execute and deliver to the Collateral Trustee appropriate Security Instruments (or amendments thereto) in such form as shall be necessary to grant the Collateral Trustee a valid and enforceable perfected Priority Lien (subject to the Intercreditor Agreement and to Permitted Prior Liens) on such Collateral or take such other actions in favor of the Collateral Trustee as shall be reasonably necessary to grant a valid and enforceable perfected Priority Lien (subject to the Intercreditor Agreement and to Permitted Prior Liens) on such Collateral to the Collateral Trustee, for the benefit of the Secured Parties and holders of any other Priority Lien Obligations, subject to the terms of this Indenture, the Intercreditor Agreement, the Collateral Trust Agreement and the other Note Documents. Additionally, subject to this Indenture, the Intercreditor Agreement, the Collateral Trust Agreement and the other Note Documents, if the Issuer or any Guarantor creates any additional Lien upon any Property that would constitute Collateral, or takes any additional actions to perfect any existing Lien on Collateral, in each case for the benefit of the holders of the Senior Priority Lien Debt, the holders of Junior Priority Lien Debt or the holders of Junior Lien Debt, after the Issue Date, the Issuer or such Guarantor, as applicable, must, to the extent permitted by applicable law, within ten (10) Business Days after such Lien is granted or other action taken, grant a valid and enforceable perfected Priority Lien (subject to the Intercreditor Agreement and to Permitted Prior Liens) upon such Property, or take such additional perfection actions, as applicable, for the benefit of the Secured Parties and obtain all related deliverables as those delivered to the Senior Priority Lien Representative, the Junior Priority Lien Representative or the Junior Lien Representative, as applicable, in each case as security for the Obligations. Notwithstanding the foregoing, to the extent that any Lien on any Collateral is perfected by the possession

or control of such Collateral or of any account in which such Collateral is held, and if such Collateral or any such account is in fact in the possession or under the control of the Senior Priority Lien Representative, or of agents or bailees of the Senior Priority Lien Representative, the perfection actions and related deliverables described in this Section 4.24 shall not be required with respect to such Collateral.

(d) The Issuer will deliver to the Collateral Trustee semi-annually on or before March 20 and September 20 in each calendar year, an Officers' Certificate certifying that, as of the date of such certificate, the Collateral includes Oil and Gas Properties that include not less than (i) 95% of the PV-10 of Proved Reserves, (ii) 95% of the PV-10 of Unproved Reserves and (iii) 95% of the value of net undeveloped acres, in each case, attributable to the Oil and Gas Properties of the Issuer and the Guarantors, as evaluated in the most recent Collateral Coverage Reserve Report after giving effect to exploration and production activities, acquisitions, dispositions and production since the date of such Collateral Coverage Reserve Report (the "Minimum Mortgaged Value"). In the event that the Collateral does not represent at least 95% of such value, then the Issuer shall, or shall cause the applicable Guarantor to, within thirty (30) days of delivery of the certificate required under this Section 4.24, execute and deliver to the Collateral Trustee: (1) such executed Mortgages or amendments or supplements to prior Mortgages naming the Collateral Trustee, as mortgagee or beneficiary, as may be necessary to cause the minimum mortgage requirement to be satisfied, (2) satisfactory evidence of the completion of all recordings and filings of such Mortgages, amendments or supplements in the proper recorders' offices or appropriate public records (and payment of any taxes or fees in connection therewith) and (3) local counsel opinion or opinions (each, subject to customary assumptions and qualifications) to the effect that the Collateral Trustee has a valid and perfected Priority Lien (subject to the Intercreditor Agreement and to Permitted Prior Liens) with respect to the real property that is subject to the applicable Mortgage; provided that, to the extent (i) corresponding mortgages securing the Senior Priority Lien Obligations are being delivered and (ii) Mortgages have previously been recorded in the public records of the state applicable to such additional Mortgages or amendments or supplements to prior Mortgages, no such opinion shall be required unless a corresponding opinion will be delivered to the Senior Priority Lien Collateral Agent (which shall be certified by the Issuer to the Collateral Trustee pursuant to an Officers' Certificate).

Section 4.25. Title Data.

(a) Within thirty (30) days (or such longer time period as acceptable to the Collateral Trustee in its sole discretion) after the delivery to the Trustee and the Holders of the Collateral Coverage Reserve Report required by Section 4.23, the Issuer will deliver title information in form and substance acceptable to the Collateral Trustee covering enough of the Oil and Gas Properties evaluated by such Collateral Coverage Reserve Report that were not included in the immediately preceding Collateral Coverage Reserve Report so that the Collateral Trustee shall have received, together with title information previously delivered to the Collateral Trustee, satisfactory title information on at least 95% of the Minimum Mortgaged Value of the Oil and Gas Properties evaluated by such Collateral Coverage Reserve Report.

(b) If title information for additional Properties has been provided under Section 4.25(a), the Issuer shall, within sixty (60) days of notice from the Collateral Trustee that title defects or exceptions exist with respect to such additional Properties that are not permitted by Section 4.12 either (1) cure any such title defects or exceptions (including defects or exceptions as to priority), (2) substitute acceptable Mortgaged Properties with no title defects or exceptions (other than Liens which are permitted by Section 4.12) having an equivalent value or (3) deliver title information in form and substance reasonably acceptable to the Collateral Trustee so that the Collateral Trustee shall have received, together

with title information previously delivered to the Collateral Trustee, satisfactory title information on at least 95% of the Minimum Mortgaged Value of the Oil and Gas Properties evaluated by such Collateral Coverage Reserve Report.

Section 4.26. Liquidity Covenant.

(a) On September 15, 2018, unless all of the 2018 Notes have been redeemed, repurchased or refinanced in accordance with the provisions of Sections 4.07 and/or 4.09 of this Indenture, then prior to any payment at maturity of the 2018 Notes, the Issuer shall have Liquidity of at least $200,000,000 and any breach of this covenant shall constitute an Event of Default under Section 5.01(c) of this Indenture.

(b) On October 26, 2020, unless all of the Indebtedness under the Second Lien Credit Agreement and/or the 1.75 Lien Credit Agreement shall have been redeemed, repurchased or refinanced in accordance with the provisions of Sections 4.07 and/or 4.09 of this Indenture, then prior to any payment at maturity of such Indebtedness, the Issuer shall have Liquidity of at least $200,000,000 and any breach of this covenant shall constitute an Event of Default under Section 5.01(c) of this Indenture.

ARTICLE 5

DEFAULTS AND REMEDIES

Section 5.01. Events of Default.

An "Event of Default" with respect to the Notes wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the Notes;

(b) default for thirty (30) days or more in the payment when due of interest on or with respect to the Notes;

(c) failure by the Issuer to comply with Section 4.26;

(d) failure by the Issuer or any Guarantor for thirty (30) days after receipt of written notice given by the Trustee or the Holders of not less than 25% in principal amount of the outstanding Notes to comply with any of its obligations, covenants or agreements (other than a default referred to in clauses (a), (b) or (c) above) contained in this Indenture, the Notes or the Security Instruments;

(e) the occurrence of the following:

(1) the Issuer or any Restricted Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable;

(2) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (e) shall not apply to secured Indebtedness (other than the Senior Priority Lien Debt, Priority Lien Debt, Junior Priority Lien Debt and Junior Lien Debt) that becomes due as a result of the voluntary sale or transfer of the property or assets by the Issuer or any of its Restricted Subsidiaries securing such Indebtedness to the extent such voluntary sale or transfer of property is permitted under this Indenture

(f) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (1) liquidation, reorganization or other relief in respect of the Issuer or any Restricted Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (2) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Issuer or any Restricted Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(g) the Issuer or any Restricted Subsidiary shall (1) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (2) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (f) above, (3) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Issuer or any Restricted Subsidiary or for a substantial part of its assets, (4) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (5) make a general assignment for the benefit of creditors or (6) take any action for the purpose of effecting any of the foregoing;

(h) the Issuer or any Restricted Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(i) one or more judgments for the payment of money in an aggregate amount in excess of $5,000,000 shall be rendered against the Issuer or any Restricted Subsidiary or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Issuer or any Restricted Subsidiary to enforce any such judgment;

(j) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, that could reasonably be expected to result in a Material Adverse Effect;

(k) any Guarantee of a Guarantor shall be held in any judicial proceeding to be unenforceable or invalid or, except as permitted by this Indenture, shall cease for any reason to be in full force and effect or any Guarantor, or any Person acting on behalf of any Guarantor, shall deny or disaffirm its obligations under its Guarantee, in each case with respect to any Guarantor that is also a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary; or

(l) the occurrence of any of the following:

(1) except as permitted by this Indenture, any Note Document establishing the Priority Liens ceases for any reason to be enforceable; provided that it will not be an Event of Default under this clause (l)(1) if the sole result of the failure of one or more Note Documents to be fully enforceable is that any Priority Lien purported to be granted under such Note Documents on Collateral, individually or in the aggregate, having a fair market value of not more than $15,000,000, ceases to be an enforceable and perfected Priority Lien; provided, that if such failure is susceptible to cure, no Event of Default shall arise with respect thereto until forty-five (45) days after any officer of the Issuer or any Restricted Subsidiary becomes aware of such failure, which failure has not been cured during such time period;

(2) except as permitted by the Note Documents, any Priority Lien purported to be granted under any Note Document on Collateral, individually or in the aggregate, having a fair market value in excess of $15,000,000, ceases to be an enforceable and perfected Priority Lien, subject to the Intercreditor Agreement and Permitted Prior Liens; provided that if such failure is susceptible to cure, no Event of Default shall arise with respect thereto until forty-five (45) days after any officer of the Issuer or any Restricted Subsidiary becomes aware of such failure, which failure has not been cured during such time period; or

(3) the Issuer or any Guarantor, or any Person acting on behalf of any of them, denies or disaffirms, in writing, any obligation of the Issuer or any Guarantor set forth in or arising under any Note Document establishing Priority Liens.

Section 5.02. Acceleration.

Subject to Section 5.05(b), if any Event of Default (other than an Event of Default specified in clause (f) or (g) of Section 5.01 hereof) occurs and is continuing under this Indenture, the Trustee or the Holders of at least 25% in principal amount of the then total outstanding Notes may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately. Upon the effectiveness of such declaration, such principal and interest shall be due and payable immediately. This Trustee may withhold from the Holders notice of any continuing Default, except a Default relating to the payment of principal, premium, if any, or interest, if it determines that withholding notice is in their interest.

Notwithstanding the foregoing, in the case of an Event of Default arising under clause (f) or (g) of Section 5.01 hereof, all outstanding Notes shall be due and payable immediately without further action or notice.

The Holders of a majority in aggregate principal amount of the then-outstanding Notes by notice to the Trustee may, on behalf of all of the Holders of all of the Notes, rescind any such acceleration with respect to the Notes and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived in accordance with the terms hereof, except nonpayment of principal of, premium, if any, or interest, if any, on the Notes that has become due solely because of acceleration. No such rescission shall affect any subsequent Default or Event of Default or impair any right consequent thereto.

Section 5.03. Other Remedies.

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 5.04. Waiver of Past Defaults.

Subject to Section 5.05(b), Holders of not less than a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default and its consequences hereunder, except a continuing Default in the payment of the principal of, premium, if any, or interest on, any Note held by a non-consenting Holder (including in connection with an Asset Sale Offer or a Change of Control Offer); provided, subject to Section 5.02 hereof, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 5.05. Control by Majority.

(a) Subject to Section 5.05(b), Holders of a majority in principal amount of the then total outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability.

(b) Notwithstanding any other provision of this Indenture (including without limitation, Sections 5.02, 5.04, 5.05(a) and 8.02), without the express written consent of the Holders representing no less than 80% of the principal amount of the Notes, no Holder or Holders shall, and no Holder or Holders shall direct, instruct or provide notice to the Trustee to, and the Trustee shall not, directly or indirectly, take any action the result of which is to alter the validity, enforceability, meaning or effect of Section 4.26(b), including but not limited to: (i) amending or otherwise modifying any of Section 4.26(b), Section 5.01(c) or this Section 5.05(b); (ii) amending or otherwise modifying the definitions of any defined terms in this Indenture to the extent that such amendment or modification would, directly or indirectly, alter the validity, meaning, enforceability or effect of Section 4.26(b), including without limitation the defined term "Liquidity" and any defined terms included in such definitions; (iii) waiving any Default or Event of Default that has occurred or may occur as a result of the failure by the Issuer to comply with Section 4.26(b), whether prospectively or retroactively, including without limitation pursuant to Section 5.01(c); or (iv) rescinding any acceleration with respect to the Notes and its consequences, but only with respect to an Event of Default that occurred as a result of the failure by the Issuer to comply with Section 4.26(b), including without limitation pursuant to Section 5.01(c). Any action taken by any Holder or the Trustee, or any successor in interest of any of the foregoing, in breach of this Section 5.05(b) shall be deemed void ab initio and of no further effect.

Section 5.06. Limitation on Suits.

Subject to Section 5.07 hereof, no Holder may pursue any remedy with respect to this Indenture or the Notes unless:

(1) such Holder has previously given the Trustee notice that an Event of Default is continuing;

(2) Holders of at least 25% in principal amount of the total outstanding Notes have requested the Trustee to pursue the remedy;

(3) Holders have offered and, if requested, provided to the Trustee indemnity or security satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee has not complied with such request within sixty (60) days after the receipt thereof and the offer of security or indemnity; and

(5) Holders of a majority in principal amount of the total outstanding Notes have not given the Trustee a direction inconsistent with such request within such sixty (60) day period.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder.

Section 5.07. Rights of Holders of Notes to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an Asset Sale Offer or a Change of Control Offer), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 5.08. Collection Suit by Trustee.

If an Event of Default specified in Section 5.01(a) or (b) hereof occurs and is continuing, the Trustee is authorized to recover judgment in their own names and as trustee of an express trust against the Issuer for the whole amount of principal of, premium, if any, and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 5.09. Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceedings, the Issuer, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding has been instituted.

Section 5.10. Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.07 hereof, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.11. Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 5.12. Trustee May File Proofs of Claim.

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Issuer (or any other obligor upon the Notes including the Guarantors), its creditors or its property and shall be entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.06 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.06 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 5.13. Priorities.

If the Trustee collects any money pursuant to this Article 5 or, after an Event of Default, any money or other property distributable in respect of the Issuer's obligations under this Indenture, it shall pay out the money in the following order:

(i) to the Trustee (including any predecessor trustee), its agents and attorneys for amounts due under Section 6.06 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

(ii) to Holders for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, respectively; and

(iii) to the Issuer or to such party as a court of competent jurisdiction shall direct, including a Guarantor, if applicable.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 5.13.

Section 5.14. Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as the Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.14 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 5.07 hereof, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

ARTICLE 6

TRUSTEE

Section 6.01. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts, statements, opinions or conclusions stated therein).

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraphs (b) or (g) of this Section 6.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer, unless it is proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 5.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to the provisions of this Section 6.01.

(e) The Trustee shall be under no obligation to exercise any of its rights or powers under this Indenture at the request or direction of any of the Holders unless the Holders have offered to the Trustee indemnity or security satisfactory to the Trustee against any loss, liability, costs or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) No provision of this Indenture shall be deemed to impose any duty or obligation on the Trustee to perform any act or acts, receive or obtain any interest in property or exercise any interest in property, or exercise any right, power, duty or obligation conferred or imposed on it in any jurisdiction in which it shall be illegal, or in which the Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts, to receive or obtain any such interest in property or to exercise any such right, power, duty or obligation; and no permissive or discretionary power or authority available to the Trustee shall be construed to be a duty.

Section 6.02. Rights of Trustee.

(a) The Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney at the sole cost of the Issuer and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(b) Before the Trustee acts, suffers or refrains from acting hereunder, it may require an Officers' Certificate or an Opinion of Counsel or both and such matter may be deemed to be conclusively proved and established by such Officers' Certificate, Opinion of Counsel or both. The Trustee shall not be liable for any action it takes, suffers or omits to take in good faith in

reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through attorneys or agents and the Trustee shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuer shall be sufficient if signed by an Officer of the Issuer.

(f) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

(g) The Trustee shall not be deemed to have notice or be charged with knowledge of any Default or Event of Default unless a Trust Officer of the Trustee has actual knowledge thereof or unless written notice of such Default or Event of Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture.

(h) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in its capacity hereunder, and each agent, custodian and other Person employed to act hereunder (including, without limitation, as Collateral Trustee).

(j) The Trustee may request that the Issuer and any Guarantor deliver an Officers' Certificate setting forth the names of the individuals and/or titles of Officers (with specimen signatures) authorized at such times to take specific actions pursuant to this Indenture, which Officers' Certificate may be signed by any person specified as so authorized in any certificate previously delivered and not superseded.

(k) The permissive right of the Trustee to take or refrain from taking action hereunder shall not be construed as a duty.

(l) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(m) The Issuer shall provide prompt written notice to the Trustee of any change to its fiscal year (it being expressly understood that the failure to provide such notice to the Trustee shall not be deemed a Default of Event of Default under this Indenture).

Section 6.03. Individual Rights of Trustee.

The Trustee in its individual or any other capacities may become the owner or pledgee of Notes and may otherwise deal with the Issuer or any Affiliate of the Issuer with the same rights it would have if it were not the Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within ninety (90) days. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.09 hereof.

Section 6.04. Trustee's Disclaimer.

The Trustee shall not be responsible for and make no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Issuer's use of the proceeds from the Notes or any money paid to the Issuer or upon the Issuer's direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

Section 6.05. Notice of Defaults.

If a Default occurs and is continuing and if it is actually known to the Trustee, the Trustee shall deliver to Holders of Notes, as their names and addresses appear in the Note Register, a notice of the Default within ninety (90) days after it occurs or after it is known to the Trustee. Except in the case of a Default relating to the payment of principal, premium, if any, or interest on any Note, the Trustee may withhold from the Holders notice of any continuing Default if and so long as a committee of its Trust Officers in good faith determines that withholding the notice is in the interests of the Holders. The Trustee shall not be deemed to know of any Default unless a Trust Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is such a Default is received by the Trustee at the Corporate Trust Office of the Trustee.

Section 6.06. Compensation and Indemnity.

The Issuer and the Guarantors, jointly and severally, shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services hereunder as the parties shall agree in writing from time to time. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer and the Guarantors, jointly and severally, shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Issuer and the Guarantors, jointly and severally, shall indemnify the Trustee and their officers, agents, directors and employees for, and hold the Trustee harmless against, any and all loss, damage, claim, liability or expense (including attorneys' fees), including taxes (other than taxes based upon, measured by or determined by the income of the Trustee) incurred by it in connection with the acceptance or administration of this trust or trusts hereunder and the performance of its duties hereunder (including the costs and expenses of enforcing this Indenture against the Issuer or any of the Guarantors (including this Section 6.06) or defending itself against any claim whether asserted by any Holder, the

Issuer, any Guarantor or any other Person, or liability in connection with the acceptance, exercise or performance of any of its powers or duties hereunder). The Trustee shall notify the Issuer promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuer shall not relieve the Issuer of its obligations hereunder. The Issuer shall defend the claim and the Trustee may have separate counsel and the Issuer shall pay the fees and expenses of such counsel. The Issuer need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct or negligence as determined by a court of competent jurisdiction in a final and non-appealable decision.

The obligations of the Issuer under this Section 6.06 shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.

To secure the performance of the obligations of the Issuer and the Guarantors in this Section 6.06, the Trustee shall have a Lien prior to the Notes upon the Collateral and all money or property held or collected by the Trustee, except funds held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture, the termination for any reason of this Indenture, and the resignation or removal of the Trustee.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 5.01(f) or (g) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

Section 6.07. Replacement of Trustee.

A resignation or removal of the Trustee and appointment of successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 6.07. The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Issuer. The Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Issuer in writing. The Issuer may remove the Trustee if:

(a) the Trustee fails to comply with Section 6.09 hereof;

(b) the Trustee is adjudged bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(c) a custodian or public officer takes charge of the Trustee or its property; or

(d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuer shall promptly appoint a successor Trustee. Within one year after a successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Issuer.

If a successor Trustee does not take office within sixty (60) days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Issuer's expense), the Issuer or the Holders of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; provided all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 6.06 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 6.07, the Issuer's obligations under Section 6.06 hereof shall continue for the benefit of the retiring Trustee.

Section 6.08. Successor Trustee by Merger, Etc.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another Person, the successor Person without any further act shall be the successor Trustee. In case any Notes shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Trustee had itself authenticated such Notes.

Section 6.09. Eligibility; Disqualification.

There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $50,000,000 as set forth in its most recent published annual report of condition.

ARTICLE 7

LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 7.01. Option to Effect Legal Defeasance or Covenant Defeasance.

The Issuer may, at its option and at any time, elect to have either Section 7.02 or 7.03 hereof applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 7.

Section 7.02. Legal Defeasance and Discharge.

Upon the Issuer's exercise under Section 7.01 hereof of the option applicable to this Section 7.02, the Issuer and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 7.04 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes and Guarantees thereof on the date the conditions set forth below are satisfied ("Legal Defeasance"). For this purpose, Legal Defeasance means that the Issuer shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 7.05 hereof and the other Sections of this Indenture referred to in (a) and (b) below, and to have satisfied all its other obligations under such Notes and this Indenture including that of the Guarantors (and the Trustee, on demand of and at the expense of the

Issuer, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder:

(a) the rights of Holders of Notes to receive payments in respect of the principal of, premium, if any, and interest on the Notes when such payments are due solely out of the trust created pursuant to this Indenture referred to in Section 7.04 hereof;

(b) the Issuer's obligations with respect to Notes concerning issuing temporary Notes, registration of such Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for security payments held in trust;

(c) the rights, powers, trusts, duties and immunities of the Trustee, and the Issuer's obligations in connection therewith; and

(d) this Section 7.02.

Subject to compliance with this Article 7, the Issuer may exercise its option under this Section 7.02 notwithstanding the prior exercise of its option under Section 7.03 hereof.

Section 7.03. Covenant Defeasance.

Upon the Issuer's exercise under Section 7.01 hereof of the option applicable to this Section 7.03, the Issuer and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 7.04 hereof, be released from their obligations under the covenants contained in Sections 4.03, 4.04, 4.05, 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19, 4.20, 4.21, 4.22, 4.23, 4.24, 4.25 and 4.26, hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 7.04 hereof are satisfied ("Covenant Defeasance"), and the Notes shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Issuer may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 5.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon the Issuer's exercise under Section 7.01 hereof of the option applicable to this Section 7.03, subject to the satisfaction of the conditions set forth in Section 7.04 hereof, Sections 5.01(e), 5.01(f) (solely with respect to Restricted Subsidiaries), 5.01(g) (solely with respect to Restricted Subsidiaries), 5.01(h), 5.01(i), 5.01(j), 5.01(k), 5.01(l), 5.01(m) hereof shall not constitute Events of Default.

Section 7.04. Conditions to Legal or Covenant Defeasance.

The following shall be the conditions to the application of either Section 7.02 or 7.03 hereof to the outstanding Notes:

In order to exercise either Legal Defeasance or Covenant Defeasance with respect to the Notes:

(1) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, Government Securities of the United States of America, or a combination thereof, in such amounts as shall be sufficient, in the opinion of a nationally recognized firm of independent public accountants and expressed in a written certification thereof delivered to the Trustee and upon which the Trustee shall be entitled to conclusively rely without

any investigation, without consideration of any reinvestment or interest to pay the principal of, premium, if any, and interest due (including an amount of cash sufficient to pay all PIK Interest) on the Notes on the stated maturity date or on the redemption date, as the case may be, of such principal, premium, if any, or interest on such Notes and the Issuer must specify whether such Notes are being defeased to maturity or to a particular redemption date;

(2) in the case of Legal Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel from counsel who is reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions,

(a) the Issuer has received from, or there has been published by, the United States Internal Revenue Service a ruling, or

(b) since the issuance of the Notes, there has been a change in the applicable U.S. federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, subject to customary assumptions and exclusions, the Holders shall not recognize income, gain or loss for U.S. federal income tax purposes, as applicable, as a result of such Legal Defeasance and shall be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of Covenant Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel from counsel who is reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions, the Holders shall not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and shall be subject to such U.S. tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) no Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness, and, in each case the granting of Liens in connection therewith) shall have occurred and be continuing on the date of such deposit;

(5) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under any Credit Facility or any other material agreement or instrument (other than this Indenture) to which, the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens in connection therewith);

(6) the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that, as of the date of such opinion and subject to customary assumptions and exclusions following the deposit, the trust funds shall not be subject to the effect of Section 547 of Title 11 of the Code;

(7) the Issuer shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Issuer with the intent of defeating, hindering, delaying or defrauding any creditors of the Issuer or any Guarantor or others; and

(8) the Issuer shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel (which Opinion of Counsel may be subject to customary assumptions and exclusions) each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance, as the case may be, have been complied with.

Section 7.05. Deposited Money and Government Securities to Be Held in Trust; Other Miscellaneous Provisions.

Subject to Section 7.06 hereof, all money and Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 7.05, the "Trustee") pursuant to Section 7.04 hereof in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer or a Guarantor acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium and interest, but such money need not be segregated from other funds except to the extent required by law.

The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or Government Securities deposited pursuant to Section 7.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Anything in this Article 7 to the contrary notwithstanding, the Trustee shall deliver or pay to the Issuer from time to time upon the request of the Issuer any money or Government Securities held by it as provided in Section 7.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 7.04(1) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 7.06. Repayment to Issuer.

Any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the principal of, premium or interest on any Note and remaining unclaimed for two years after such principal, and premium or interest has become due and payable shall be paid to the Issuer on its request or (if then held by the Issuer) shall be discharged from such trust; and the Holder of such Note shall thereafter look only to the Issuer for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, shall thereupon cease.

Section 7.07. Reinstatement.

If the Trustee or Paying Agent is unable to apply any Dollars or Government Securities in accordance with Section 7.02 or 7.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuer's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 7.02 or 7.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 7.02 or 7.03 hereof, as the case may be; provided that, if the Issuer makes any payment of principal of, premium or interest on any Note following the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 8

AMENDMENT, SUPPLEMENT AND WAIVER

Section 8.01. Without Consent of Holders of Notes.

Notwithstanding Section 8.02 hereof, the Issuer, any Guarantor (with respect to a Guarantee or this Indenture), the Trustee and the Collateral Trustee may amend or supplement this Indenture, any Security Instruments, the Notes and any Guarantee thereof without the consent of any Holder:

(1) to cure any ambiguity, omission, mistake, defect or inconsistency;

(2) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(3) to provide the assumption of the Issuer's or any Guarantor's obligations to the Holders and to the Trustee;

(4) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under this Indenture of any such Holder;

(5) to add covenants for the benefit of the Holders or to surrender any right or power conferred upon the Issuer or any Guarantor;

(6) to evidence and provide for the acceptance and appointment under this Indenture of a successor Trustee thereunder pursuant to the requirements thereof;

(7) to provide for the issuance of exchange notes or private exchange notes, which are identical to exchange notes except that they are not freely transferable;

(8) to add a Guarantor under this Indenture;

(9) to make any amendment to the provisions of this Indenture relating to the transfer and legending of Notes as permitted by this Indenture, including, without limitation, to facilitate the issuance and administration of such Notes; provided, however, that (i) compliance with this Indenture as so amended would not result in such Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer Notes;

(10) to add additional assets as Collateral;

(11) to release Collateral from the Lien or any Guarantor from its Guarantee, in each case pursuant to this Indenture and the Security Instruments when permitted or required by this Indenture, the Guarantees, or the Security Instruments; or

(12) in the event that PIK Notes are issued, to make appropriate amendments to reflect an appropriate minimum denomination of PIK Notes, and establish minimum redemption amounts for PIK Notes.

Upon the request of the Issuer accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Section 6.02 hereof, the Trustee shall join with the Issuer and the Guarantors in

the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise. Notwithstanding the foregoing, no Opinion of Counsel shall be required in connection with the addition of a Guarantor under this Indenture upon execution and delivery by such Guarantor and the Trustee of a supplemental indenture to this Indenture, the form of which is attached as Exhibit D hereto, and delivery of an Officers' Certificate.

After an amendment, supplement or waiver under this Section 8.01 becomes effective, the Issuer shall mail to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Issuer to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver.

Section 8.02. With Consent of Holders of Notes.

Except as provided below in this Section 8.02, the Issuer, subject to Section 5.05(b), the Trustee and the Collateral Trustee may amend or supplement this Indenture, any Security Instruments, the Notes and any Guarantee thereof with the consent of the Holders of at least a majority in principal amount of the Notes then outstanding voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Sections 5.04 and 5.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Notes or any Guarantees thereof may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes voting as a single class (including consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes). Section 2.08 and Section 2.09 hereof shall determine which Notes are considered to be "outstanding" for the purposes of this Section 8.02.

Notwithstanding the foregoing, with respect to any provision in this Indenture, the Notes and any Guarantee thereof that requires the consent of the Eligible Holders or Lead Holders, as applicable, representing a majority of the principal amount of Notes held by such Eligible Holders or Lead Holders, as applicable, the Issuer, the Trustee and the Collateral Agent will notify all Eligible Holders or Lead Holders, as applicable, in advance of any applicable amendment or supplement taking effect and may not amend or supplement such provision without the consent of the Eligible Holders or Lead Holders, as applicable, representing a majority of the principal amount of Notes held by such Eligible Holders or Lead Holders, as applicable.

Upon the request of the Issuer accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 6.02 hereof, the Trustee shall join with the Issuer in the execution of such amended or supplemental indenture unless such amended or supplemental indenture directly affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amended or supplemental indenture.

It shall not be necessary for the consent of the Holders of Notes under this Section 8.02 to approve the particular form of any proposed amendment or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 8.02 becomes effective, the Issuer shall mail to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Issuer to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver.

Without the consent of each affected Holder of Notes, an amendment or waiver under this Section 8.02 may not (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of such Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed final maturity of any such Note or alter or waive the provisions with respect to the redemption of such Notes (other than provisions relating to Section 3.09, Section 4.10 and Section 4.14 hereof to the extent that any such amendment or waiver does not have the effect of reducing the principal of or changing the fixed final maturity of any such Note or altering or waiving the provisions with respect to the redemption of such Notes);

(3) reduce the rate of or change the time for payment of interest on any Note;

(4) waive a Default in the payment of principal of or premium, if any, or interest on the Notes, except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of such Notes and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in this Indenture or any Guarantee thereof which cannot be amended or modified without the consent of all Holders of Notes;

(5) make any Note payable in money other than that stated therein;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of or premium, if any, or interest on the Notes;

(7) make any change in these amendment and waiver provisions;

(8) impair the right of any Holder of Notes to receive payment of principal of, or interest on, such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes;

(9) make any change to or modify the ranking of the Notes that would adversely affect the Holders of such Notes; or

(10) except as expressly permitted by this Indenture, modify the Guarantees of the Notes by any Significant Subsidiary in any manner adverse in any material respect to the Holders.

In addition, without the consent of the Holders of at least 66 2⁄3% in aggregate principal amount of Notes then outstanding, no amendment, supplement or waiver may modify any Security Instruments or the provisions in this Indenture dealing with the Collateral or the Security Instruments that would have the impact of releasing all or substantially all of the Collateral from the Liens of the Security Instruments (except as permitted by the terms of this Indenture and the Security Instruments) or change or alter the priority of the security interests in the Collateral. Without the consent of the Holders of at least a majority

in aggregate principal amount of Notes then outstanding, no amendment, supplement or waiver may (1) modify any Security Instrument or the provisions in this Indenture dealing with the Collateral or the Security Instruments that would have the impact of releasing less than all or substantially all of the Collateral from the Liens of the Security Instruments (except as permitted by the terms of this Indenture and the Security Instruments), (2) make any change in any Security Instrument or the provisions in this Indenture dealing with the application of trust proceeds of the Collateral that would adversely affect the Holders in any material respect or (3) modify the Intercreditor Agreement in any manner adverse to the Holders in any material respect other than in accordance with the terms of this Indenture and the Security Instruments.

Section 8.03. Effect of Supplemental Indentures; Revocation and Effect of Consents.

Upon the execution of any supplemental indenture under this Article 8, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes.

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

The Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, supplement or waiver. If a record date is fixed, then, notwithstanding the preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only such Persons, shall be entitled to consent to such amendment, supplement, or waiver or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date unless the consent of the requisite number of Holders has been obtained.

Section 8.04. Notation on or Exchange of Notes.

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Issuer in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

Section 8.05. Trustee to Sign Amendments, Etc.

The Trustee and Collateral Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article 8 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee and Collateral Trustee. The Issuer may not sign an amendment, supplement or waiver until the Board of Directors approves it. In executing any amendment, supplement or waiver, the Trustee and Collateral Trustee shall be entitled to receive and (subject to Section 6.01 hereof) shall be fully protected in relying upon, in addition to the documents required by Section 12.02 hereof, an Officers' Certificate and an Opinion of Counsel stating that the execution of such amended or

supplemental indenture is authorized or permitted by this Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Issuer and any Guarantors party thereto, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof. Notwithstanding the foregoing, no Opinion of Counsel shall be required for the Trustee and Collateral Trustee to execute any amendment or supplement adding a new Guarantor under this Indenture.

ARTICLE 9

GUARANTEES

Section 9.01. Guarantee.

Subject to this Article 9, each of the Guarantors hereby, jointly and severally, irrevocably and unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Issuer hereunder or thereunder, that: (a) the principal of, interest, premium on the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Issuer to the Holders or the Trustee hereunder or thereunder shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

The Guarantors hereby agree that their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer, protest, notice and all demands whatsoever and covenants that this Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

Each Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees) incurred by the Trustee or any Holder in enforcing any rights under this Section 9.01.

If any Holder or the Trustee is required by any court or otherwise to return to the Issuer, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Issuer or the Guarantors, any amount paid either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 5 hereof for the purposes of this Guarantee, notwithstanding any stay,

injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 5 hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Guarantee. The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantees.

Each Guarantee shall remain in full force and effect and continue to be effective in any insolvency proceeding affecting the Issuer, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or Guarantees thereof, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

In case any provision of any Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Each payment to be made by a Guarantor in respect of its Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

Section 9.02. Limitation on Guarantor Liability.

Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of each Guarantor shall be limited to the maximum amount as shall, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 9, result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under applicable law. Each Guarantor that makes a payment under its Guarantee shall be entitled upon payment in full of all guaranteed obligations under this Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor's pro rata portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with GAAP.

Section 9.03. Execution and Delivery.

To evidence its Guarantee set forth in Section 9.01 hereof, each Guarantor hereby agrees that this Indenture shall be executed on behalf of such Guarantor by its President, one of its Vice Presidents or one of its Assistant Vice Presidents.

Each Guarantor hereby agrees that its Guarantee set forth in Section 9.01 hereof shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

If an Officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates the Note, the Guarantee shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantors.

If required by Section 4.15 hereof, the Issuer shall cause any newly created or acquired Restricted Subsidiary to comply with the provisions of Section 4.15 hereof and this Article 9, to the extent applicable.

Section 9.04. Subrogation.

Each Guarantor shall be subrogated to all rights of Holders against the Issuer in respect of any amounts paid by any Guarantor pursuant to the provisions of Section 9.01 hereof; provided that, if an Event of Default has occurred and is continuing, no Guarantor shall be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Issuer under this Indenture or the Notes shall have been paid in full.

Section 9.05. Benefits Acknowledged.

Each Guarantor acknowledges that it shall receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the guarantee and waivers made by it pursuant to its Guarantee are knowingly made in contemplation of such benefits.

Section 9.06. Release of Guarantees.

A Guarantee of the Notes by a Guarantor shall be automatically and unconditionally released and discharged, and no further action by such Guarantor, the Issuer or the Trustee is required for the release of such Guarantor's Guarantee, upon:

(1) (A) any sale, exchange or transfer (by merger, consolidation, amalgamation, wind-up liquidation, dissolution or otherwise) of the Capital Stock of such Guarantor (including any sale, exchange or transfer), after which the applicable Guarantor is no longer a Restricted Subsidiary, if such sale, exchange or transfer is made in compliance with the applicable provisions of this Indenture;

(B) the release or discharge of the guarantee by, or direct obligation of, such Guarantor of its guarantee obligations in respect of all Series of Secured Debt (other than the Notes), Senior Debt or the guarantee which resulted in the creation of such Guarantee, except a discharge or release by or as a result of payment under such guarantee or direct obligation (it being understood that a release subsequent to a contingent reinstatement is still a release) or a full and complete discharge of all Series of Secured Debt (other than the Notes);

(C) the proper designation of any Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary in compliance with this Indenture; or

(D) the Issuer exercising its Legal Defeasance option or Covenant Defeasance option in accordance with Article 7 hereof or the Issuer's obligations under this Indenture being discharged in accordance with the terms of this Indenture;

(E) the merger or consolidation of any Guarantor with and into the Issuer or another Guarantor that is the surviving Person in such merger or consolidation, or upon the liquidation of such Guarantor following the transfer of all or substantially all of its assets to the Issuer or another Guarantor; and

(2) such Guarantor delivering to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in this Indenture relating to such transaction have been complied with.

ARTICLE 10

COLLATERAL AND SECURITY

Section 10.01. The Collateral Trustee.

By accepting a Note, each Holder is deemed to have irrevocably appointed the Collateral Trustee to act as its agent under the Security Instruments and the Intercreditor Agreement and irrevocably authorized the Collateral Trustee to (i) perform the duties and exercise the rights, powers and discretions that are specifically given to it under the Security Instruments, the Intercreditor Agreement or other documents to which it is a party, together with any other incidental rights, powers and discretions, and (ii) execute each document expressed to be executed by the Collateral Trustee on its behalf. Each Holder agrees that the Collateral Trustee shall be entitled to the rights, privileges, protections, immunities, indemnities and benefits provided to the Trustee by this Indenture, the Intercreditor Agreement and the Security Instruments. The Collateral Trustee will have no duties or obligations except those expressly set forth in the Security Instruments to which it is party or in the Intercreditor Agreement; provided, however that no provision of this Indenture shall be construed to relieve the Collateral Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable decision. Notwithstanding the generality of the foregoing:

(a) The duties and obligations of the Collateral Trustee shall be determined solely by the express provisions of this Indenture, the Intercreditor Agreement and the Security Instruments and the Collateral Trustee shall not be liable to any party hereto, to the Intercreditor Agreement or to any Security Instrument to which it is a party by reason of any failure on the part of any other party hereto or any maker, guarantor, endorser or other signatory of any document or any other Person to perform such Person's obligations under any such document.

(b) The Collateral Trustee shall not be responsible in any manner for the validity, enforceability or sufficiency of this Indenture, the Security Instruments, the Intercreditor Agreement or any Collateral delivered under the Security Instruments, or for the value or collectability of any Notes or for any representations made or obligations assumed by any party other than the Collateral Trustee. The Collateral Trustee shall not be bound to examine or inquire into or be liable for any defect or failure in the right or title of the Issuer or the Guarantors to all or any of the assets whether such defect or failure was known to the Collateral Trustee or might have been discovered upon examination or inquiry and whether capable of remedy or not.

(c) The Collateral Trustee shall not be responsible for any unsuitability, inadequacy, expiration or unfitness of any security interest created pursuant to any Security Instrument pertaining to this matter nor shall it be obligated to make any investigation into, and shall be entitled to assume, the adequacy and fitness of any security interest created pursuant to any Security Instrument pertaining to this matter.

(d) The Collateral Trustee shall not be liable for any error of judgment, or for any act done or step taken or omitted by it in good faith or for any mistake in fact or law, or for anything which it may do or refrain from doing in connection herewith, in each case except for its own gross negligence or willful misconduct.

(e) The Collateral Trustee may seek the advice, at the expense of the Issuer, of legal counsel in the event of any dispute or question as to the construction of any of the provisions of this Indenture, the Intercreditor Agreement or its duties hereunder or under any Security Instrument or applicable law, and it shall incur no liability and shall be fully protected in respect of any action taken, omitted or suffered by it in good faith in accordance with the advice or written opinion of such counsel.

(f) The Collateral Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, approval or other paper or document it receives in connection with this Indenture, the Intercreditor Agreement or any Security Instrument.

(g) In no event shall the Collateral Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Collateral Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(h) In no event shall the Collateral Trustee be liable for any failure or delay in the performance of its obligations hereunder, under the Intercreditor Agreement or under any Security Instrument because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, strikes, work stoppages, civil or military disturbances, nuclear or natural catastrophes, fire, riot, embargo, loss or malfunctions of utilities, communications or computer (software and hardware) services, government action, including any laws, ordinances, regulations, governmental action or the like which delay, restrict or prohibit the providing of the services contemplated by this Indenture, the Intercreditor Agreement or any Security Instrument.

(i) The Collateral Trustee agrees to accept and act upon facsimile or electronic transmission of written instructions pursuant to this Indenture or any Security Instrument; provided, however that (i) the party providing such written instructions, subsequent to such transmission of written instructions, shall provide the originally executed instructions or directions to the Collateral Trustee in a timely manner, and (ii) such originally executed instructions or directions shall be signed by an authorized representative of the party providing such instructions or directions.

(j) The Collateral Trustee shall be entitled to seek written directions from the requisite Holders or the Trustee (at the direction of the requisite Holders) prior to taking any action under this Indenture, the Intercreditor Agreement or any Security Instrument or with respect to any Collateral.

(k) The Collateral Trustee shall not be responsible to any Holder for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any Lien or security interest created or purported to be created under or in connection with, any Security Instrument or any other instrument or document furnished pursuant thereto.

(l) The Collateral Trustee shall have no responsibility for or liability with respect to monitoring compliance of any other party to the Security Instruments, the Intercreditor Agreement, this Indenture or any other document related hereto or thereto. The Collateral Trustee has no duty to monitor the value or rating of any Collateral on an ongoing basis.

(m) No provision of this Indenture, the Intercreditor Agreement or any Security Instrument shall require the Collateral Trustee to expend, advance or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under this Indenture, the Intercreditor Agreement or in any of the Security Instruments or in the exercise of any of its rights or powers hereunder, under the Intercreditor Agreement or under any of the Security Instruments unless it is indemnified to its satisfaction and the Collateral Trustee shall have no liability to any Person for any loss occasioned by any delay in taking or failure to take any such action while it is awaiting an indemnity satisfactory to it.

(n) Whenever in the administration of this Indenture, the Intercreditor Agreement or any Security Instrument the Collateral Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Collateral Trustee (unless other evidence be herein specifically prescribed) may conclusively rely upon written instructions from the requisite Holders.

(o) The Collateral Trustee may act and rely and shall be protected in acting and relying in good faith on the opinion or advice of, or information obtained from, any counsel, accountant, investment banker, appraiser or other expert or adviser, whether retained or employed by the Holders or by the Collateral Trustee.

(p) The Collateral Trustee may employ or retain such counsel, accountants, sub-agent, agent or attorney in fact, appraisers or other experts or advisers as it may reasonably require for the purpose of determining and discharging its rights and duties hereunder and shall not be responsible for the actions of any such parties it appoints with due care.

(q) The Collateral Trustee may request that the requisite Holders or other parties deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, the Intercreditor Agreement or any Security Instrument.

(r) Money held by the Collateral Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Collateral Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed by the Collateral Trustee in writing.

(s) Notwithstanding anything to the contrary herein, beyond the exercise of reasonable care in the custody thereof, the Collateral Trustee shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto. Without limiting the generality of the foregoing, the Collateral Trustee 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 Lien or security interest in the Collateral. The Collateral Trustee shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords similar collateral and shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee.

(t) The Collateral Trustee shall not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens on any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral. The Collateral Trustee shall have no duty to ascertain or inquire as to or monitor the performance or observance of any of the terms of this Indenture or the Security Instruments.

(u) The Issuer and the Guarantors, jointly and severally, shall defend, indemnify, and hold harmless the Collateral Trustee from and against any claims, demands, penalties, fines, liabilities, settlements, damages or reasonable costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of the following in respect of the Collateral: (w) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or affecting the soil, water, vegetation, buildings, personal property, Persons or animals; (x) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (y) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or (z) any violation of laws, orders, regulations, requirements or demands of government authorities, which are based upon or in any way related to such Hazardous Materials including, reasonable attorney and consultant fees and expenses, reasonable investigation and laboratory fees, court costs, and reasonable litigation expenses, except, in each case, where such claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses arise from the gross negligence or willful misconduct of the Collateral Trustee as determined in a final, non-appealable order of a court of competent jurisdiction.

(v) The Collateral Trustee reserves the right to conduct an environmental audit prior to foreclosing on any real estate Collateral or mortgage Collateral. The Collateral Trustee reserves the right to forebear from foreclosing in its own name if to do so may expose it to undue risk.

(w) Upon any payment or distribution of assets hereunder, under the Intercreditor Agreement or under any Security Instrument, the Collateral Trustee shall be entitled to conclusively rely upon any order or decree entered by any court of competent jurisdiction in which an insolvency or liquidation proceeding is pending, or a certificate of the trustee in bankruptcy, liquidating trustee, custodian, receiver, assignee for the benefit of creditors, agent or other Person making such payment or distribution in such insolvency or liquidation proceeding, delivered to the Collateral Trustee, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto.

(x) The rights and protections of the Collateral Trustee set forth herein shall also be applicable to the Collateral Trustee in its roles as mortgagee, beneficiary, pledgee or any of its other roles (including as Collateral Trustee) under the Security Instruments.

(y) In acting as Collateral Trustee, the Collateral Trustee may rely upon, enjoy the benefits of and enforce each and all of the rights, powers, immunities, indemnities and benefits of the Trustee under Article 6 hereof.

(z) Notwithstanding anything in this Indenture to the contrary and for the avoidance of doubt, the Collateral Trustee and the Trustee shall have no duty to act outside of the United States of America in respect of any Collateral.

Section 10.02. Authority of Collateral Trustee to Release Collateral and Liens.

By accepting a Note, each Holder is deemed to authorize the Collateral Trustee to release or subordinate any Collateral that is permitted to be sold, reclassified or released or be subject to a Lien pursuant to the terms of this Indenture, the Intercreditor Agreement or the Security Instruments. By accepting a Note, each Holder is deemed to authorize the Collateral Trustee to execute and deliver to the Issuer, at the Issuer's sole cost and expense, any and all releases of Liens, termination statements, assignments or other documents reasonably requested by the Issuer in connection with any sale, reclassification or other disposition of Oil and Gas Property or such other Collateral to the extent such sale, reclassification or other disposition is permitted by the terms of Section 4.10 or is otherwise authorized by the terms of this Indenture, the Intercreditor Agreement or the Security Instruments.

Section 10.03. Security Instruments.

(a) To secure the full and punctual payment when due and the full and punctual performance of the obligations of the Issuer and the Guarantors in respect of the Notes and this Indenture (including the Guarantees thereof), the Issuer and the Guarantors shall, on the Issue Date:

(1) enter into the Intercreditor Agreement and deliver to the Collateral Trustee all certificates representing Capital Stock and other instruments and documents required thereunder;

(2) file, register or record all documents and instruments, including Uniform Commercial Code financing statements, required by applicable law to be filed, registered or recorded to create the Liens intended to be created by the Security Instruments and to perfect such Liens to the extent required by, and with the priority required by, the Security Instruments or this Indenture; and

(3) enter into such Security Instruments creating Liens on all interests in Property owned by the Issuer or any Guarantor that are subject to any Lien securing the Senior Priority Lien Debt.

(b) Notwithstanding anything to the contrary set forth in clause (a) or elsewhere in this Indenture, the Intercreditor Agreement or any Security Instrument, (1) any mortgages (and any related Security Instruments) required to be granted pursuant to clause (a) on the Issue Date with respect to real property that is securing Senior Priority Lien Debt on the Issue Date shall be granted as soon as commercially reasonable following the Issue Date, but in no event later than twenty (20) days following the Issue Date (it being understood any such mortgages shall be accompanied by customary local counsel opinions), (2) any control agreements required to be entered into pursuant to clause (a) with respect to deposit accounts and securities accounts that are securing Senior Priority Lien Debt on the Issue Date shall be entered into as soon as commercially reasonable following the Issue Date, but in no event later than twenty (20) days following the Issue Date, and (3) within 20 days of the Issue Date, the Issuer shall have provided the Trustee with title information setting forth the status of title to at least 95% of the Minimum Mortgaged Value.

(c) On or after the Issue Date, the Issuer and the Guarantors shall enter into additional Security Instruments and take or cause to be taken all such actions as may be required pursuant to this Indenture, the Intercreditor Agreement or under any Security Instruments to create, perfect and maintain, as security for the obligations of the Issuer and the Guarantors in respect of the Notes, this Indenture (including the Guarantees) and the Security Instruments, a valid and enforceable perfected Priority Lien and security interest (subject to the Intercreditor Agreement and Permitted Prior Liens) in all of the Collateral (subject to the terms of the Intercreditor Agreement and the Security Instruments in all respects) in favor of the Collateral Trustee for the benefit of the Secured Parties.

(d) Each Holder, by accepting a Note, consents and agrees to the terms of the Security Instruments entered into on the Issue Date or from time to time thereafter (including the provisions providing for the possession, use, release and foreclosure of Collateral) as each may be amended from time to time in accordance with their terms and this Indenture, the Security Instruments and the Intercreditor Agreement, and authorizes and directs the Trustee and the Collateral Trustee to execute and deliver the Security Instruments, as applicable, and any documents relating thereto, in each case on behalf of such Holder and without any further consent.

(e) In the event that security interests in any of the Collateral are not created as of the Issue Date, the Issuer and the Guarantors shall use commercially reasonable efforts to implement security arrangements with respect to such Collateral as promptly as reasonably practicable after the Issue Date (or on such later date as may be permitted by the Holders in their sole discretion).

(f) Each Holder, by accepting the Notes, is deemed to acknowledge that, as more fully set forth in the Security Instruments, the Collateral as now or hereafter constituted shall be for the benefit of all the Holders, the Collateral Trustee, the Trustee and the other secured parties described in the Security Instruments and that the Lien granted in the Security Instruments relating to the Notes in respect of the Trustee, the Collateral Trustee, the Holders and such other secured parties is subject to and qualified and limited in all respects by the Security Instruments and actions that may be taken thereunder.

Section 10.04. Intercreditor Agreement. By accepting a Note, each Holder is deemed to acknowledge that the obligations of the Issuer under the Senior Priority Lien Debt, the Junior Priority Lien Debt, the Junior Lien Debt and any Refinancing Indebtedness in respect thereof are and shall be secured by Liens on assets of the Issuer and the Guarantors that constitute Collateral under the Security Instruments and that the relative Lien priorities and other creditor rights of the Holders hereunder and the secured parties thereunder will be set forth in the Intercreditor Agreement. By accepting a Note, each Holder is deemed to acknowledge that it has received a copy of the Intercreditor Agreement. By accepting a Note, each Holder is deemed to (a) consent to the subordination of the Liens on the Collateral securing the Notes and the Guarantees thereof on the terms set forth in the Intercreditor Agreement, authorize and direct the Trustee and the Collateral Trustee to execute and deliver the Intercreditor Agreement and any documents relating thereto, in each case on behalf of such Holder and without any further consent, authorization or other action by such Holder, (c) agrees that, upon the execution and delivery thereof, such Holder will be bound by the provisions of the Intercreditor Agreement as if it were a signatory thereto and will take no actions contrary to the provisions of the Intercreditor Agreement and (d) agrees that no Holder shall have any right of action whatsoever against the Trustee or the Collateral Trustee as a result of any action taken by the Trustee or the Collateral Trustee pursuant to this Section 10.04 or in accordance with the terms of the Intercreditor Agreement. By accepting a Note, each Holder is deemed to further irrevocably authorize and direct the Collateral Trustee (i) to take such actions as shall

be required to release Liens on the Collateral in accordance with the terms of the Intercreditor Agreement and (ii) to enter into such amendments, supplements or other modifications to the Intercreditor Agreement in connection with any extension, renewal, refinancing or replacement of any Notes or any Refinancing Indebtedness in respect thereof as are reasonably acceptable to the Collateral Trustee to give effect thereto, in each case on behalf of such Holder and without any further consent, authorization or other action by such Holder. The Collateral Trustee shall have the benefit of the provisions of Article 6 with respect to all actions taken by it pursuant to this Section 10.04 or in accordance with the terms of the Intercreditor Agreement to the full extent thereof.

Section 10.05. Further Assurances.

The Issuer and the Guarantors shall, at their sole expense, take all actions that are required to confirm that the Collateral Trustee holds, for the benefit of the Secured Parties and the holders of any Priority Lien Obligations, duly created, enforceable and perfected Priority Liens upon the Collateral and security interests in the Collateral (subject to the Intercreditor Agreement and Permitted Prior Liens) as contemplated by this Indenture, the Notes, the Guarantees of the Notes and the Security Instruments.

Subject to the applicable limitations set forth in the Security Instruments, the Intercreditor Agreement and herein, the Issuer and the Guarantors shall, at their sole expense, execute, acknowledge and deliver such documents and instruments and take such other actions, as may be required by applicable law or the applicable Security Instruments to create, protect, assure, perfect, transfer and confirm the Liens, benefits, property and rights conveyed or intended to be conveyed by this Indenture or the Security Instruments for the benefit of the Secured Parties in the Collateral, including any acquired Property pursuant to Section 4.24.

Notwithstanding anything to the contrary contained in this Indenture, the Intercreditor Agreement or any Security Instrument, neither the Collateral Trustee nor any Holder shall be required to execute any agreement, document or instrument creating or evidencing the subordination of the Liens on the Collateral securing the Notes and the Guarantees thereof to any Permitted Prior Liens.

Section 10.06. Release of Collateral.

(a) The Liens on the Collateral shall be released with respect to the Obligations under this Indenture, Notes and the Guarantees, as applicable:

(1) in whole, upon payment in full of the principal of, accrued and unpaid interest, and premium, if any, on the Notes;

(2) in whole, upon satisfaction and discharge of this Indenture as set forth under Article 11 hereof;

(3) in whole, upon a legal defeasance or covenant defeasance as set forth under Article 7 hereof;

(4) in connection with asset sales and dispositions permitted or not prohibited pursuant to this Indenture; provided, however that such Liens shall not be released if such sale or disposition is to the Issuer or a Restricted Subsidiary;

(5) with respect to assets constituting Collateral owned by a Guarantor upon release of such Guarantor from its Guarantee as set forth under Article 9 hereof;

provided, that the Liens on such assets securing any other Series of Secured Debt are simultaneously released;

(6) to the extent such Collateral is comprised of property leased to the Issuer or a Guarantor, upon termination or expiration of such lease; and

(7) with respect to Collateral that is Capital Stock, upon the dissolution, wind up or liquidation of the issuer of that Capital Stock that is not prohibited by this Indenture.

(b) Upon compliance by the Issuer or any Guarantor, as the case may be, with the conditions precedent required by this Indenture, solely in accordance with the Intercreditor Agreement and the Security Instruments, the Collateral Trustee shall promptly cause to be released and reconveyed to the Issuer, or the Guarantor, as the case may be, the released Collateral. Prior to each proposed release, the Issuer and each Guarantor shall furnish to the Collateral Trustee all documents required by this Indenture and the Security Instruments.

ARTICLE 11

SATISFACTION AND DISCHARGE

Section 11.01. Satisfaction and Discharge.

This Indenture shall be discharged and shall cease to be of further effect as to all Notes, when either:

(1) all Notes theretofore authenticated and delivered, except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust, have been delivered to the Trustee for cancellation; or

(2) (A) all Notes not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise, shall become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer and the Issuer or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, Government Securities of the United States of America, or a combination thereof, in such amounts as shall be sufficient, in the opinion of a nationally recognized firm of independent public accountants without consideration of any reinvestment of interest to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(B) no Default (other than that resulting from borrowing funds to be applied to make such deposit or the grant of any Lien securing such borrowing or any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens in connection therewith) with respect to this Indenture or the Notes shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit shall not result in a breach or violation of, or constitute a default under, any Credit Facility or any other material agreement or instrument (other than this Indenture) to which the Issuer or any Guarantor is a party or by which the Issuer or any

Guarantor is bound (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens in connection therewith);

(1) the Issuer has paid or caused to be paid all sums payable by it under this Indenture; and

(2) the Issuer has delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Notes at maturity or the redemption date, as the case may be.

In addition, the Issuer must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money shall have been deposited with the Trustee pursuant to Section 11.01(2)(A), the provisions of Section 11.02 and Section 7.06 hereof shall survive.

Section 11.02. Application of Trust Money.

Subject to the provisions of Section 7.06 hereof, all money deposited with the Trustee pursuant to Section 11.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent are unable to apply any money or Government Securities in accordance with Section 11.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuer's and any Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.01 hereof; provided that if the Issuer has made any payment of principal of, premium or interest on any Notes because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

ARTICLE 12

MISCELLANEOUS

Section 12.01. Notices.

Any notice or communication by the Issuer, any Guarantor or the Trustee to the others is duly given if in writing and delivered in person or mailed by first-class mail (registered or certified, return receipt requested), fax or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Issuer and/or any Guarantor:

EXCO Resources, Inc.
12377 Merit Drive, Suite 1700
Dallas, Texas 75251
Attention: Chief Financial Officer
Facsimile: (972) 699-5180

With a copy to:

Kirkland & Ellis, LLP
Attention: Justin Hoffman
600 Travis Street, Suite 3300
Houston, Texas 77002
Facsimile: (713) 835-3601
Email: Justin.Hoffman@Kirkland.com

If to the Trustee:

Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890
Attention: EXCO Resources, Inc. Administrator
Facsimile: (302) 636-4145

The Issuer, any Guarantor or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five (5) calendar days after being deposited in the mail, postage prepaid, if mailed by first-class mail; when receipt acknowledged, if faxed; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery; provided that any notice or communication delivered to the Trustee shall be deemed effective upon actual receipt thereof.

Any notice or communication to a Holder shall be mailed by first-class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Issuer mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

The Trustee shall have the right, but shall not be required, to rely upon and comply with notices, instructions, directions or other communications sent by e-mail, facsimile and other similar unsecured electronic methods by persons believed by the applicable Trustee to be authorized to give instructions and directions on behalf of the Issuer. The Trustee shall have no duty or obligation to verify or confirm that the person who sent such instructions or directions is, in fact, a person authorized to give instructions or directions on behalf of the Issuer; and the Trustee shall have no liability for any losses, liabilities, costs or expenses incurred or sustained by the Issuer as a result of such reliance upon or compliance with such notices, instructions, directions or other communications. The Issuer agrees to assume all risks arising

out of the use of such electronic methods to submit notices, instructions, directions or other communications to the Trustee, including without limitation the risk of the applicable Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties. The Issuer shall use all reasonable endeavors to ensure that any such notices, instructions, directions or other communications transmitted to the Trustee pursuant to this Indenture are complete and correct. Any such notices, instructions, directions or other communications shall be conclusively deemed to be valid instructions from the Issuer to the Trustee for the purposes of this Indenture

Section 12.02. Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Issuer or any of the Guarantors to the Trustee to take any action under this Indenture, the Issuer or such Guarantor, as the case may be, shall furnish to the Trustee:

(a) An Officers' Certificate (which shall include the statements set forth in Section 12.03 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(b) An Opinion of Counsel (which shall include the statements set forth in Section 12.03 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied; provided that no such Opinion of Counsel shall be required to be delivered in connection with the issuance of the Notes that are issued on the Issue Date.

Section 12.03. Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to Section 4.04 hereof) shall include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with (and, in the case of an Opinion of Counsel, may be limited to reliance on an Officers' Certificate as to matters of fact); and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

Section 12.04. Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 12.05. No Personal Liability of Directors, Officers, Employees and Stockholders.

No director, manager, officer, employee, incorporator or stockholder of the Issuer or any Guarantor or any of their parent companies or entities shall have any liability for any obligations of the Issuer or the Guarantors under the Notes, the Guarantees of the Notes, this Indenture or the Security

Instruments or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 12.06. Governing Law.

THIS INDENTURE, THE NOTES AND ANY GUARANTEE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 12.07. Waiver of Jury Trial.

EACH OF THE ISSUER, THE GUARANTORS AND THE TRUSTEE, AND EACH HOLDER OF A NOTE BY ITS ACCEPTANCE THEREOF, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 12.08. Force Majeure.

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services.

Section 12.09. No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Issuer or its Restricted Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 12.10. Successors.

All agreements of the Issuer in this Indenture and the Notes shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 9.05 hereof.

Section 12.11. Severability.

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 12.12. Counterpart Originals.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 12.13. Table of Contents, Headings, Etc.

The Table of Contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

Section 12.14. Consent to Jurisdiction.

Each party irrevocably agrees that any legal suit, action or proceeding arising out of or based upon this Indenture or the transactions contemplated hereby ("Related Proceedings") may be instituted in the federal courts of the United States of America located in the City of New York or the courts of the State of New York in each case located in the Borough of Manhattan in the City of New York (collectively, the "Specified Courts"), and irrevocably submits to the non-exclusive jurisdiction of such courts in any such suit, action or proceeding. The parties further agree that service of any process, summons, notice or document by mail to such party's address set forth above shall be effective service of process for any lawsuit, action or other proceeding brought in any such court. The parties hereby irrevocably and unconditionally waive any objection to the laying of venue of any lawsuit, action or other proceeding in the Specified Courts, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such lawsuit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

Section 12.15. Business Days.

If a payment date, delivery date or date of performance is not a Business Day, such payment, delivery or performance may be made on the next succeeding day that is a Business Day and, if applicable, no additional interest shall accrue in respect of the time period to and including such next succeeding Business Day.

Section 12.16. USA Patriot Act

The parties hereto acknowledge that in accordance with Section 326 of the USA Patriot Act, the Trustee and Paying Agent, like all financial institutions and in order to help fight the funding of terrorism and money laundering, are required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account. The parties to this agreement agree that they will provide the Trustee and the Paying Agent with such information as they may request in order to satisfy the requirements of the USA Patriot Act.

Section 12.17. Calculations.

The Issuer shall be responsible for making all calculations and determinations called for under this Indenture and the Notes. These calculations and determinations include, but are not limited to, accrued interest payable on the Notes, Applicable Premium and the Treasury Rate. The Issuer shall make all these calculations in good faith and, absent manifest error, the Issuer's calculations shall be final and binding on the Holders. The Issuer shall provide a schedule of these calculations to the Trustee and the Paying Agent (if other than the Trustee) as requested or required hereunder, and the Trustee and Paying Agent are entitled to rely conclusively upon the accuracy of the Issuer's calculations without independent verification, and nether the Trustee nor the Paying Agent will have any responsibility for making any such calculations. The Trustee will forward the Issuer's calculations to any Holder upon the written request of that Holder at the sole cost and expense of the Issuer.

Section 12.18. Intercreditor Agreement.

Reference is made to the Intercreditor Agreement, dated as of October 26, 2015, and amended as of March 15, 2017, among JPMorgan Chase Bank, N.A., as Original Priority Lien Agent (as defined therein), and Wilmington Trust, National Association, as Second Lien Collateral Trustee (as defined therein), and Wilmington Trust, National Association, as Original Third Lien Collateral Trustee (as defined therein) (the "Intercreditor Agreement"). Each holder of Obligations (i) consents to the subordination of Liens provided for in the Intercreditor Agreement, (ii) agrees that it will be bound by, and will take no actions contrary to, the provisions of the Intercreditor Agreement and (iii) authorizes and instructs the Collateral Trustee on behalf of each Second Lien Secured Party (as defined therein) to enter into the Intercreditor Agreement as Second Lien Collateral Trustee on behalf of such Second Lien Secured Parties and perform its obligations in accordance with the Intercreditor Agreement. The foregoing provisions are intended as an inducement to the lenders under the First Lien RBL Credit Agreement to extend credit to the Issuer and such lenders are intended third party beneficiaries of such provisions and the provisions of the Intercreditor Agreement.

[Signatures on following page]

EXCO RESOURCES, INC.

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

GUARANTORS:

EXCO SERVICES, INC.

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

EXCO PARTNERS GP, LLC

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

EXCO GP PARTNERS OLD, LP

By: EXCO PARTNERS GP, LLC, its General Partner

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

EXCO PARTNERS OLP GP, LLC

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

EXCO OPERATING COMPANY, LP

By: EXCO PARTNERS OLP GP, LLC,
its general partner

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

EXCO MIDCONTINENT MLP, LLC

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

EXCO HOLDING (PA), INC.

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

EXCO PRODUCTION COMPANY (PA), LLC

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

EXCO PRODUCTION COMPANY (WV), LLC

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

EXCO RESOURCES (XA), LLC

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

EXCO LAND COMPANY, LLC

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

EXCO HOLDING MLP, INC.

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

RAIDER MARKETING, LP

By: RAIDER MARKETING GP, LLC, its General Partner

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: /s/ Michael H. Wass
Name: Michael H. Wass
Title: Vice President

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Collateral Trustee

By: /s/ Michael H. Wass
Name: Michael H. Wass
Title: Vice President

EXHIBIT B

Exhibit 10.4

EXECUTION VERSION

1.75 LIEN TERM LOAN CREDIT AGREEMENT

dated as of

March 15, 2017

among

EXCO RESOURCES, INC.,
as Borrower

CERTAIN SUBSIDIARIES OF BORROWER,
as Guarantors

The Lenders Party Hereto

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Administrative Agent

and

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Collateral Trustee

TABLE OF CONTENTS

ARTICLE X

MISCELLANEOUS

EXHIBITS:

SCHEDULES:

1.75 LIEN TERM LOAN CREDIT AGREEMENT

THIS 1.75 LIEN TERM LOAN CREDIT AGREEMENT, dated as of March 15, 2017, among EXCO RESOURCES, INC., a Texas corporation, as Borrower, CERTAIN SUBSIDIARIES OF BORROWER, as Guarantors, the LENDERS party hereto, WILMINGTON TRUST, NATIONAL ASSOCIATION, as Administrative Agent and WILMINGTON TRUST, NATIONAL ASSOCIATION, as Collateral Trustee.

RECITALS

WHEREAS, the Lenders are, collectively, the direct, or indirect through their subsidiaries and affiliated funds, holders of (x) $300,000,000 in aggregate principal amount of the Borrower's *pari passu* senior secured second lien term loans issued pursuant to that certain Term Loan Credit Agreement, dated as of October 19, 2015 (as amended, supplemented, modified, restated, refinanced or replaced from time to time in accordance with the Intercreditor Agreement, the Collateral Trust Agreement and Section 6.01(b)(3) and as in effect prior to the effectiveness of the Exchange Agreement, the "Fairfax Credit Agreement"), by and among the Borrower, as borrower, certain subsidiaries of the Borrower as guarantors party from time to time thereto, the lenders party from time to time thereto, Hamblin Watsa Investment Counsel, Ltd., as administrative agent, Wilmington Trust, National Association, as collateral trustee, and the other parties party from time to time thereto, and (y) $382,753,719 in aggregate principal amount of the Borrower's *pari passu* senior secured second lien term loans issued pursuant to that certain Term Loan Credit Agreement, dated as of October 19, 2015 (as amended, supplemented, modified, restated, refinanced or replaced prior to the Effective Date and as in effect prior to the effectiveness of the Exchange Agreement, the "Exchange Term Loan Agreement" and collectively with the Fairfax Credit Agreement, the "Existing Second Lien Credit Agreements"), by and among, the Borrower, as borrower, certain subsidiaries of the Borrower as guarantors party from time to time thereto, the lenders party from time to time thereto, Wilmington Trust, National Association, as administrative agent, Wilmington Trust, National Association, as collateral trustee, and the other parties party from time to time thereto;

WHEREAS, concurrently with the occurrence of the Effective Date, the Lenders will enter the Exchange Agreement whereby each Lender, as a lender under one or both of the Fairfax Term Loan Agreement (the "Tranche A Fairfax Term Loan Lenders") or the Exchange Term Loan Agreement (the "Tranche A Exchange Term Loan Lenders"), as applicable, will agree to accept as prepayment, in full and on a cashless basis, of certain or all of its respective commitments, loans and other obligations (the "Existing Exchanged Loans") under the applicable Existing Second Lien Credit Agreements, as applicable, and to the extent provided in the Exchange Agreement, in an equal principal amount of the Loans and Commitments hereunder;

WHEREAS, as a result of the transactions contemplated by the Exchange Agreement, (x) the obligations under the Fairfax Credit Agreement will be repaid in full and the Fairfax Credit Agreement will be terminated and (y) the Exchange Term Loan Agreement will be amended by the Exchange Term Loan Amendment and will be referred to for all purposes hereunder as the "Junior Lien Credit Agreement";

WHEREAS, the Borrower has requested that the Lenders provide a term loan facility, and the Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and of the loans and commitments hereinafter referred to, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"Act" has the meaning assigned to such term in Section 10.14.

"Additional Secured Debt Designation" means the written agreement of the Priority Lien Representative of holders of any Series of Priority Lien Debt, the Junior Priority Lien Representative of holders of any Series of Junior Priority Lien Debt or the Junior Lien Representative of holders of any Series of Junior Lien Debt, as applicable, as set forth in the indenture, credit agreement or other agreement governing such Series of Priority Lien Debt, Series of Junior Priority Lien Debt or Series of Junior Lien Debt, for the benefit of (a) all holders of existing and future Senior Priority Lien Debt, the Senior Priority Lien Collateral Agent and each existing and future holder of Senior Priority Liens, (b) if applicable, all holders of each existing and future Series of Priority Lien Debt, the Priority Lien Collateral Trustee and each existing and future holder of Priority Liens, (c) if applicable, all holders of each existing and future Series of Junior Priority Lien Debt, the Junior Priority Lien Collateral Agent and each existing and future holder of Junior Priority Liens, and (d) if applicable, all holders of each existing and future Series of Junior Lien Debt, the Junior Lien Collateral Agent and each existing and future holder of Junior Liens, in each case:

(1) providing that all Priority Lien Obligations, Junior Priority Lien Obligations or Junior Lien Obligations, as applicable, will be and are secured equally and ratably by all Priority Liens, Junior Priority Liens or Junior Liens, as applicable, at any time granted by the Borrower or any Guarantor to secure any Obligations in respect of such Series of Priority Lien Debt, Series of Junior Priority Lien Debt or Series of Junior Lien Debt, as applicable, whether or not upon Property otherwise constituting collateral for such Series of Priority Lien Debt, Series of Junior Priority Lien Debt or Series of Junior Lien Debt, as applicable, and that all such Priority Liens, Junior Priority Liens or Junior Liens, as applicable, will be enforceable by the Collateral Trustee, the Junior Priority Lien Collateral Agent or Junior Lien Collateral Agent, as applicable, for the benefit of all holders of Priority Lien Obligations, Junior Priority Lien Obligations or Junior Lien Obligations, as applicable, equally and ratably;

(2) providing that such Priority Lien Representative, Junior Priority Lien Representative or Junior Lien Representative, as applicable, and the holders of Obligations in respect of such Series of Priority Lien Debt, Series of Junior Priority Lien Debt or Series of Junior Lien Debt, as applicable, are bound by the provisions of the Intercreditor Agreement, including the provisions relating to the ranking of Senior Priority Liens, Priority Liens, Junior Priority Liens and Junior Liens and the order of application of proceeds from the enforcement of Senior Priority Liens, Priority Liens, Junior Priority Liens and Junior Liens; and

(3) appointing the Priority Lien Collateral Trustee, Collateral Trustee, Junior Priority Lien Collateral Agent or Junior Lien Collateral Agent, as applicable, and consenting to the terms of the Intercreditor Agreement and the performance by the Priority Lien Collateral Trustee, Collateral Trustee, Junior Priority Lien Collateral Agent or Junior Lien Collateral Agent, as applicable, of, and directing the Collateral Trustee, Junior Priority Lien Collateral Agent or Junior Lien Collateral Agent, as applicable, to perform, its obligations under the Collateral Trust Agreement or applicable security documents, as applicable, and the Intercreditor Agreement, together with all such powers as are reasonably incidental thereto.

"Administrative Agent" means Wilmington Trust, National Association, in its capacity as contractual representative of the Lenders hereunder pursuant to Article IX and not in its individual capacity as a Lender, and any successor agent appointed pursuant to Article IX.

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

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Affiliate Transaction" has the meaning assigned to such term in Section 6.05.

"Agents" has the meaning assigned to such term in Section 9.01.

"Aggregate Credit Exposure" means, as of any date of determination, the sum of the Credit Exposure of all of the Lenders as of such date.

"Agreement" means this 1.75 Lien Term Loan Credit Agreement, dated as of March 15, 2017, as may be further amended, restated, amended and restated, supplemented, replaced (whether upon or after termination or otherwise) modified or restated in accordance with the terms hereof.

"Appalachian Area" has the meaning assigned to such term in the Marcellus Joint Development Agreement as in effect on the Marcellus JV Closing Date and as amended or restated thereafter.

"Applicable Percentage" means, with respect to any Lender at any time, (a) with respect to the Term Loans, a percentage equal to a fraction the numerator of which is the

aggregate outstanding principal amount of the Term Loans of such Lender and the denominator of which is the aggregate outstanding principal amount of the Term Loans of all Term Lenders, and (b) with respect to the Aggregate Credit Exposure, a percentage based upon its share of the Aggregate Credit Exposure; provided that, in accordance with Section 2.15 (other than Section 2.15(b)), so long as any Lender shall be a Defaulting Lender, such Defaulting Lender's Commitment shall be disregarded in the calculations under clauses (a) and (b) above. The initial amount of each Lender's Applicable Percentage is as set forth on Schedule 2.01. If the Commitments have terminated or expired, the Applicable Percentage of any Lender shall be determined based upon the Commitments most recently in effect, giving effect to any assignments and to any Lender's status as a Defaulting Lender at the time of determination.

"Approved Bank" means any domestic or foreign commercial bank having capital and surplus of not less than $250,000,000 in the case of U.S. banks and $100,000,000 (or the Dollar Equivalent as of the date of determination) in the case of non-U.S. banks.

"Approved Fund" has the meaning assigned to such term in Section 10.04.

"Approved Petroleum Engineer" means Lee Keeling & Associates, Netherland Sewell & Associates, Inc., Ryder Scott Petroleum Consultants or any other reputable firm of independent petroleum engineers selected by the Borrower and approved by the Administrative Agent and the Majority Lenders which approval shall not be unreasonably withheld.

"Asset Sale" means any sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions) by the Borrower or any Restricted Subsidiary, including any disposition by means of a merger, consolidation or similar transaction (each referred to for the purposes of this definition as a "disposition") of (a) any shares of Capital Stock of a Restricted Subsidiary (other than directors' qualifying shares or shares required by applicable law to be held by a Person other than the Borrower or a Restricted Subsidiary), (b) all or substantially all the assets of any division or line of business of the Borrower or any Restricted Subsidiary, and (c) any other assets of the Borrower or any Restricted Subsidiary outside of the ordinary course of business of the Borrower or such Restricted Subsidiary; provided that none of the following shall constitute an "Asset Sale" for purposes of this Agreement:

(a) a disposition by (i) a Guarantor to the Borrower or by the Borrower or a Guarantor to a Guarantor, (ii) a Non-Credit Party Restricted Subsidiary to the Borrower or a Guarantor and (iii) a Non-Credit Party Restricted Subsidiary to a Non-Credit Party Restricted Subsidiary;

(b) for purposes of Section 6.04 only, a disposition that constitutes a Restricted Payment (or would constitute a Restricted Payment but for the exclusions from the definition thereof) and that is not prohibited by Section 6.04;

(c) a disposition of Crude Oil, Natural Gas or other Hydrocarbons or other mineral products in the ordinary course of business of the oil and gas production operations of the Borrower and its Subsidiaries (but, excluding, among other things and for the avoidance of doubt, the disposition of all or substantially all the assets of the Borrower and its Restricted Subsidiaries, taken as a whole);

(d) the provision of services, equipment and other assets for the operation and development of the Borrower's and its Restricted Subsidiaries' Crude Oil and Natural Gas wells, in the ordinary course of the Borrower's and its Restricted Subsidiaries Oil and Gas Business, notwithstanding that such transactions may be recorded as asset sales in accordance with full cost accounting guidelines;

(e) the sale or other disposition of cash or Temporary Cash Investments, Hedging Obligations or other financial instruments in the ordinary course of business;

(f) the trade or exchange by the Borrower or any Restricted Subsidiary of any Oil and Gas Property of the Borrower or such Restricted Subsidiary for any Oil and Gas Properties of another Person or for the Capital Stock of a Person primarily engaged in the Oil and Gas Business, including any de minimis amount of cash or Cash Equivalents necessary in order to achieve an exchange of equivalent value (but, excluding, among other things and for the avoidance of doubt, the disposition of all or substantially all the assets of the Borrower and its Restricted Subsidiaries, taken as a whole); provided, however, that the value of the Oil and Gas Properties therein received by the Borrower or any Restricted Subsidiary in such trade or exchange (including any cash or Cash Equivalents) is at least equal to the fair market value (as determined in good faith by the Board of Directors or an executive officer of the Borrower or such Restricted Subsidiary with the responsibility for such transaction (if the Board of Directors has delegated such determination to such executive officer, which delegation may occur for Oil and Gas Properties for which the fair market value is less than $30,000,000), which determination shall be conclusive evidence of compliance with this provision) of the Oil and Gas Properties or Capital Stock of a Person primarily engaged in the Oil and Gas Business (including any cash or Cash Equivalents) so traded or exchanged; provided, further, that any Net Cash Proceeds are applied pursuant to the requirements of Section 2.08;

(g) the creation or perfection of a Lien permitted pursuant to this Agreement;

(h) the abandonment, farm-out, lease or sublease of developed or undeveloped Oil and Gas Properties in the ordinary course of business;

(i) the sale or transfer of surplus or obsolete equipment;

(j) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;

(k) the licensing or sublicensing of intellectual property (including without limitation the licensing of seismic data) or other general intangibles and licenses, leases or subleases of other property (other than any Oil and Gas Properties or other interest in real property) in the Borrower's ordinary course of business which do not materially interfere with the business of the Borrower and its Restricted Subsidiaries;

(l) the surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind;

(m) the following transactions:

(i) the sale, transfer or assignment by the Borrower, EXCO PA, EXCO WV or any other Restricted Subsidiary of an undivided interest in Oil and Gas Properties acquired by the Borrower, EXCO PA, EXCO WV or any other Restricted Subsidiary in the Appalachian Area to the extent required pursuant to and in accordance with the right of first refusal provisions of the Marcellus JV Documents; and

(ii) the sale, transfer or assignment by the Borrower, EOC or any other Restricted Subsidiary of an undivided interest in Oil and Gas Properties acquired by the Borrower, EOC or any other Restricted Subsidiary in the East Texas/North Louisiana Area to the extent required pursuant to and in accordance with the right of first refusal provisions of the BG Joint Development Agreement; and

(n) a disposition of assets in a single transaction or a series of related transactions with a fair market value of less than $6,000,000.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

"Attributable Debt" in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value (discounted at the interest rate borne by the Loans, compounded annually) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended); provided, that if such Sale/Leaseback Transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of "Capital Lease Obligation."

"Backstop Commitment Parties" means Hamblin Watsa Investment Counsel Ltd. and its Affiliates (including Fairfax Financial Holdings Limited), ESAS, OCM EXCO Holdings LLC and Gen IV and, in each case, their respective Affiliates (excluding, in each case, the Company and its Subsidiaries) and any arranger, representative or agent appointed by such parties to act on their behalf in their collective capacity as the Backstop Commitment Parties under this Agreement and the other Loan Documents.

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

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereinafter in effect, or any successor statute.

"Bankruptcy Event" means, with respect to any Person, such Person becomes the subject of a bankruptcy, reorganization or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that, for the avoidance of doubt, a Bankruptcy Event shall not result solely by virtue of (i) any ownership interest, or the acquisition of any ownership interest, in such Person or any parent thereof by a Governmental Authority or instrumentality thereof or (ii) in the case of a solvent Person, the precautionary appointment of an administrator, guardian, custodian or other similar official by a Governmental Authority under or based on the law of the country where such Person is subject to home jurisdiction supervision if applicable law requires that such appointment not be publicly disclosed where such action does not result in or provide such Person with immunity from the jurisdiction of courts within the United States of America or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality), to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"Bankruptcy Law" means the Bankruptcy Code and any other federal, state or foreign bankruptcy, insolvency, receivership or similar law.

"BG Development Costs" means the costs and expenses Incurred in the conduct of development operations in the East Texas/North Louisiana Area pursuant to the BG JV Documents.

"BG Joint Development Agreement" means that certain Joint Development Agreement, dated as of August 14, 2009 (as the same may be amended, supplemented, modified or restated), by and among BG US Production Company, LLC, a Delaware limited liability company, and EOC, pursuant to which the parties thereto entered into a joint development agreement to develop and operate certain oil and gas properties located in the East Texas/North Louisiana Area.

"BG JV Documents" means the BG Joint Development Agreement and any other documents, instruments, agreements or certificates contemplated by or executed in connection therewith.

"BG Operating Account" means that certain controlled disbursement operating account maintained at JPMorgan Chase Bank, N.A. and established by EOC and BG US Production Company, LLC, a Delaware limited liability company, for the purpose of funding the costs and expenses associated with the development of the East Texas/North Louisiana Area in accordance with the terms of the BG Joint Development Agreement.

"Bluescape Agreement" means that certain Services and Investment Agreement, dated as of March 31, 2015, between Borrower and Energy Strategic Advisory Services LLC, a Delaware limited liability company, as the same may be amended, supplemented, modified, restated, refinanced or replaced from time to time.

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Board of Directors" means: (a) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board; (b) with respect to a partnership, the board of directors of the general partner of the partnership; (c) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and (d) with respect to any other Person, the board or committee of such Person serving a similar function.

"Borrower" means EXCO Resources, Inc., a Texas corporation.

"Borrowing" means a borrowing of a Term Loan made on the same date.

"Borrowing Request" means a request by the Borrower for a Borrowing in accordance with Section 2.04.

"Business Day" means each day which is not a Saturday, a Sunday or a day on which commercial banks in New York, New York are authorized or required by law, regulation or executive order to remain closed.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) 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. For purposes of Section 6.07, a Capital Lease Obligation will be deemed to be secured by a Lien on the property being leased.

"Capital Stock" means: (a) in the case of a corporation, corporate stock or shares in the capital of such corporation; (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person; provided that any instrument evidencing Indebtedness convertible or exchangeable into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock, shall not be deemed to be Capital Stock unless and until such instrument is so converted or exchanged.

"Cash Equivalents" means any of the following:

(a) Dollars;

(b) securities issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof, the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of two years or less from the date of acquisition;

(c) certificates of deposit, time deposits and eurodollar time deposits with maturities of three years or less from the date of acquisition, demand deposits, bankers' acceptances with maturities not exceeding three years and overnight bank deposits, in each case with an Approved Bank;

(d) repurchase obligations for underlying securities of the types described in clauses (b) and (c) above or clauses (f) and (g) below entered into with any Approved Bank or recognized securities dealer meeting the qualifications specified in clause (c) above;

(e) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation (other than structured investment vehicles and other than corporations used in structured financing transactions) rated at least P-2 (or the equivalent thereof) or A-2 (or the equivalent thereof) from either Moody's or S&P (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) and in each case maturing within 36 months after the date of acquisition thereof;

(f) marketable short-term money market and similar liquid funds having a rating of at least P-2 (or the equivalent thereof) or A-2 (or the equivalent thereof) from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower);

(g) readily marketable direct obligations issued or fully guaranteed by any state, commonwealth or territory of the U.S. or any political subdivision or taxing authority thereof; provided that each such readily marketable direct obligation shall have an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) with maturities of two years or less from the date of acquisition;

(h) Investments with average maturities of 18 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower);

(i) investment funds investing substantially all of their assets in securities of the types described in clauses (a) through (h) above; and

(j) Indebtedness or preferred stock issued by Persons with a rating of "A" or higher from S&P and "A-2" from Moody's with maturities of two years or less from the date of acquisition.

"Cash Interest" has the meaning assigned to such term in Section 2.10.

"Cash Management Obligations" means any obligations in respect of treasury management arrangements, depositary or other cash management services, including commercial credit card and merchant card services.

"Change in Law" means (a) the adoption of any law, rule, regulation or treaty (including any rules or regulations issued under or implementing any existing law) after the date of this Agreement, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender (or, for purposes of Section 2.11(b), by any lending office of such Lender or by such Lender's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted, issued or implemented.

"Change of Control" means the occurrence of any of the following events:

(a) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), other than any Permitted Investor, is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause (a) such person shall be deemed to have "beneficial ownership" of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Borrower (or its successors by merger, consolidation or purchase of all or substantially all of its assets);

(b) the adoption of a plan relating to the liquidation or dissolution of the Borrower;

(c) the merger or consolidation of the Borrower with or into another Person or the merger of another Person with or into the Borrower, or the sale of all or substantially all the assets of the Borrower (determined on a consolidated basis) to another Person other than, in the case of a merger or consolidation transaction, a transaction in which holders of securities that represented 100% of the Voting Stock of the Borrower immediately prior to such transaction (or other securities into which such securities are converted as part of such merger or consolidation transaction) become the beneficial owners directly or indirectly of at least a majority of the Voting Stock of the surviving Person in such merger or consolidation transaction immediately after such transaction; or

(d) the occurrence of any "Change of Control" (or similar term) as such term is defined under the First Lien RBL Credit Agreement or under any Senior Priority Lien Document, Priority Lien Document, Junior Priority Lien Document or Junior Lien Document.

"Charges" has the meaning assigned to such term in Section 10.13.

"Code" means the United States Internal Revenue Code of 1986, as amended, or any successor statute.

"Collateral" means all assets, whether now owned or hereafter acquired by any Borrower or any other Credit Party, in which a Lien is granted or purported to be granted to any Secured Party or the Collateral Trustee as security for any Obligation.

"Collateral Coverage Ratio" means, as of any date, the ratio of (a) the sum of (without duplication) (i) the PV-10 of Proved Reserves and Unproved Reserves of the Mortgaged Properties and other Oil and Gas Properties as evaluated in the Collateral Coverage Reserve Report most recently delivered pursuant to Section 5.11, and (ii) the value for net undeveloped acres that do not have scheduled locations within the Collateral Coverage Reserve Report derived from Credit Parties' land records and recent leasing activity for comparable acreage, to (b) the aggregate outstanding Secured Indebtedness of the Borrower and its Restricted Subsidiaries as of such date.

"Collateral Coverage Reserve Report" means a report setting forth, as of the end of the Borrower's most recent fiscal year, (i) the PV-10 of the Proved Reserves, as evaluated in the Reserve Report most recently delivered pursuant to Section 5.11, based upon the economic assumptions consistent with the First Lien RBL Agent's lending requirements at the time, (ii) the PV-10 of the Unproved Reserves of the Mortgaged Properties and other Oil and Gas Properties, and (iii) the value for net undeveloped acres that do not have scheduled locations within the Proved Reserves and Unproved Reserves derived from Credit Parties' land records and recent leasing activity for comparable acreage attributable to the Oil and Gas Properties of the Borrower and the Restricted Subsidiaries, based upon NYMEX Prices as of the report date.

"Collateral Trust Agreement" means that certain Collateral Trust Agreement dated as of October 19, 2015 among (after giving effect to the amendment and restatement to be made thereto on the Effective Date) the Borrower, the Guarantors party thereto, the Collateral Trustee, the Administrative Agent and the Junior Lien Administrative Agent, as the same was amended on the Effective Date in the form attached hereto as Exhibit F and as may be further amended, restated, amended and restated, supplemented, replaced (whether upon or after termination or otherwise) modified or restated in accordance with the terms thereof.

"Collateral Trust Joinder Agreement" means, with respect to the Collateral Trust Agreement, (x) in the case of additional debt, a joinder agreement substantially in the form of Exhibit B to the Collateral Trust Agreement or (y) in the case of an additional grantor, a joinder agreement substantially in the form of Exhibit C to the Collateral Trust Agreement.

"Collateral Trustee" means the collateral trustee for all holders of the Junior Priority Lien Obligations and Junior Lien Obligations under the Collateral Trust Agreement. Wilmington Trust, National Association will initially serve as the Collateral Trustee.

"Commitment" means, with respect to each Lender, such Lender's Term Loan Commitment. The initial amount of each Lender's Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable. As of the Effective Date, the aggregate principal amount of the Commitments is $682,753,719.

"Commodity Agreement" means any oil or natural gas hedging agreement and other agreement or arrangement entered into in the ordinary course of business and designed to protect the Borrower or any Restricted Subsidiary against fluctuations in oil or natural gas prices.

"Common Stock" means the shares of common stock, par value $0.001 per share, of the Borrower.

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated Coverage Ratio" as of any date of determination means the ratio of (a) the aggregate amount of EBITDA for the period of the most recent four consecutive fiscal quarters ending prior to the date of such determination to (b) Consolidated Interest Expense for such four fiscal quarters; provided, that:

(a) if the Borrower or any Restricted Subsidiary has Incurred any Indebtedness since the beginning of such period that remains outstanding or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio is an Incurrence of Indebtedness, or both, EBITDA and Consolidated Interest Expense for such period shall be calculated after giving effect on a pro forma basis to such Indebtedness as if such Indebtedness had been Incurred on the first day of such period;

(b) if the Borrower or any Restricted Subsidiary has repaid, repurchased, defeased or otherwise discharged any Indebtedness since the beginning of such period or if any Indebtedness is to be repaid, repurchased, defeased or otherwise discharged (in each case other than Indebtedness Incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) on the date of the transaction giving rise to the need to calculate the Consolidated Coverage Ratio, EBITDA and Consolidated Interest Expense for such period shall be calculated on a pro forma basis as if such discharge had occurred on the first day of such period and as if the Borrower or such Restricted Subsidiary has not earned the interest income actually earned during such period in respect of cash or Temporary Cash Investments used to repay, repurchase, defease or otherwise discharge such Indebtedness;

(c) if since the beginning of such period the Borrower or any Restricted Subsidiary shall have made any Asset Sale, EBITDA for such period shall be reduced by an amount equal to EBITDA (if positive) directly attributable to the assets which are the

subject of such Asset Sale for such period, or increased by an amount equal to EBITDA (if negative), directly attributable thereto for such period and Consolidated Interest Expense for such period shall be reduced by an amount equal to the Consolidated Interest Expense directly attributable to any Indebtedness of the Borrower or any Restricted Subsidiary repaid, repurchased, defeased or otherwise discharged with respect to the Borrower and the continuing Restricted Subsidiaries in connection with such Asset Sale for such period (or, if the Capital Stock of any Restricted Subsidiary is sold, the Consolidated Interest Expense for such period directly attributable to the Indebtedness of such Restricted Subsidiary to the extent the Borrower and the continuing Restricted Subsidiaries are no longer liable for such Indebtedness after such sale);

(d) if since the beginning of such period the Borrower or any Restricted Subsidiary (by merger or otherwise) shall have made an Investment in any Restricted Subsidiary (or any Person which becomes a Restricted Subsidiary) or an acquisition, including any acquisition of assets occurring in connection with a transaction requiring a calculation to be made, which constitutes all or substantially all of an operating unit of a business, EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto (including the Incurrence of any Indebtedness) as if such Investment or acquisition occurred on the first day of such period;

(e) if since the beginning of such period any Person (that subsequently became a Restricted Subsidiary or was merged with or into the Borrower or any Restricted Subsidiary since the beginning of such period) shall have made any Asset Sale, any Investment or acquisition of assets that would have required an adjustment pursuant to clause (c) or (d) above if made by the Borrower or a Restricted Subsidiary during such period, EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto as if such Asset Sale, Investment or acquisition occurred on the first day of such period; and

(f) interest income reasonably anticipated by such Person to be received during the applicable four-quarter period from cash or Temporary Cash Investments held by such Person or any Restricted Subsidiary of such Person, which cash or Temporary Cash Investments exist on the date of determination or will exist as a result of the transaction giving rise to the need to calculate the Consolidated Coverage Ratio, will be included.

For purposes of this definition, whenever pro forma effect is to be given to an acquisition of assets, the amount of income or earnings relating thereto and the amount of Consolidated Interest Expense associated with any Indebtedness Incurred in connection therewith, the pro forma calculations shall be determined in good faith by a responsible financial or accounting officer of the Borrower. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Interest Rate Agreement applicable to such Indebtedness, but if the remaining term of such Interest Rate Agreement is less than twelve (12) months, then such Interest Rate Agreement shall only be taken into account for that portion of the period equal to the remaining term thereof).

If any Indebtedness is incurred under a revolving credit facility and is being given pro forma effect, the interest on such Indebtedness shall be calculated based on the average daily balance of such Indebtedness for the four fiscal quarters subject to the pro forma calculation to the extent that such Indebtedness was incurred solely for working capital purposes.

"Consolidated Interest Expense" means, for any period, the total interest expense of the Borrower and the consolidated Restricted Subsidiaries, *plus*, to the extent not included in such total interest expense, and to the extent incurred by the Borrower or the Restricted Subsidiaries, without duplication,

(a) PIK Interest, "PIK Interest" (as defined in the Senior Secured Notes Indenture), and interest expense attributable to Capital Lease Obligations;

(b) capitalized interest;

(c) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing;

(d) net payments pursuant to Currency Agreements and Interest Rate Agreements;

(e) dividends accrued in respect of all Preferred Stock held by Persons other than the Borrower or a Wholly-Owned Subsidiary (other than dividends payable solely in Capital Stock (other than Disqualified Stock) of the Borrower);

(f) interest incurred in connection with Investments in discontinued operations;

(g) interest actually paid by the Borrower or any such Restricted Subsidiary under any Guarantee of Indebtedness or other obligation of any Person; and

(h) the cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than the Borrower) in connection with Indebtedness Incurred by such plan or trust.

Notwithstanding the foregoing, there shall be excluded from Consolidated Interest Expense (1) Consolidated Interest Expense with respect to any Production Payments to the extent such Production Payments are excluded from the definition of "Indebtedness" and (2) noncash interest expense incurred in connection with interest rate caps and other interest rate and currency options that, at the time entered into, resulted in the Borrower and its Restricted Subsidiaries being either neutral or net payors as to future payouts under such caps or options.

"Consolidated Net Income" means, for any period, the net income of the Borrower and its consolidated Restricted Subsidiaries; provided, however, that there shall not be included in such Consolidated Net Income the following items, in each case adjusted for income

taxes, using the Borrower's estimated income tax rate for the applicable period, attributable to such items excluded from Consolidated Net Income:

(a) any net income of any Person (other than the Borrower) if such Person is not a Restricted Subsidiary or that is accounted for by the equity method of accounting, except that:

(1) subject to the exclusion contained in clause (e) below, the Borrower's equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Borrower or a consolidated Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to a Restricted Subsidiary, to the limitations contained in clause (c) below); and

(2) the Borrower's cash contributions (net of cash contributions or other cash distributions from such Person) in connection with a net loss of any such Person for such period shall be included in determining such Consolidated Net Income;

(b) any net income (or loss) of any Person acquired by the Borrower or a consolidated Restricted Subsidiary in a pooling of interests transaction (or any transaction accounted for in a manner similar to a pooling of interests) for any period prior to the date of such acquisition;

(c) any net income of any consolidated Restricted Subsidiary if such consolidated Restricted Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such consolidated Restricted Subsidiary, directly or indirectly, to the Borrower, except that:

(1) subject to the exclusion contained in clause (e) below, the Borrower's equity in the net income of any such consolidated Restricted Subsidiary for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed (or, if greater, for purposes of calculation of the Consolidated Coverage Ratio only, permitted at the date of determination to be distributed) by such consolidated Restricted Subsidiary during such period to the Borrower or another consolidated Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to another consolidated Restricted Subsidiary, to the limitation contained in this clause); and

(2) the Borrower's cash contributions in connection with a net loss of any such consolidated Restricted Subsidiary for such period shall be included in determining such Consolidated Net Income;

(d) any gain (or loss) realized upon the sale or other disposition of any assets of the Borrower, its consolidated Subsidiaries or any other Person (including pursuant to any sale-and-leaseback arrangement) which are not sold or otherwise disposed of in the ordinary course of business and any gain (or loss) realized upon the sale or other disposition of any Capital Stock of any Person;

(e) any impairment losses on Oil and Gas Properties;

(f) extraordinary or non-recurring gains or losses;

(g) any unrealized non-cash gains or losses or charges in respect of Hedging Obligations (including those resulting from the application of ASC815);

(h) any non-cash compensation charge arising from any grant of stock, stock options or other equity based awards;

(i) any income from assets or businesses classified as discontinued operations;

(j) the cumulative effect of a change in accounting principles; and

(k) to the extent deducted in the calculation of Consolidated Net Income, any non-cash or non-recurring charges relating to any premium or penalty paid, write-off of deferred financing costs or other financial recapitalization charges in connection with redeeming or retiring any Indebtedness prior to its Stated Maturity will be excluded, in each case, for such period.

Notwithstanding the foregoing, for the purpose of Section 6.02 only (but not the calculation of the Consolidated Coverage Ratio for purposes of determining compliance with such covenant), there shall be excluded from Consolidated Net Income any repurchases, repayments or redemptions of Investments, proceeds realized on the sale of Investments or return of capital to the Borrower or a Restricted Subsidiary to the extent such repurchases, repayments, redemptions, proceeds or returns increase the amount of Restricted Payments permitted under such section pursuant to Section 6.02(a)(3)(iii). In addition, for purposes of this definition, the term "non-recurring" means any charge, expense, loss or gain as of any date that is not reasonably likely to recur within the two years following the date of occurrence of such charge, expense, loss or gain; provided that if there is a charge, expense, loss or gain similar to such expense, loss or gain within the two years preceding such date, such expense, loss or gain shall not be deemed non-recurring and; provided further, that severance payments shall be considered "non-recurring" regardless of the frequency of the payment of such payments.

"Consolidated Subsidiaries" means, for any Person, any Subsidiary or other entity the accounts of which would be consolidated with those of such Person in its consolidated financial statements in accordance with GAAP.

"Contingent Obligations" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ("*primary obligations*") of any other Person (the "*primary obligor*") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent:

(a) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(b) to advance or supply funds:

(1) for the purchase or payment of any such primary obligation, or

(2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Counterpart Agreement" means a Counterpart Agreement substantially in the form of Exhibit C delivered by a Guarantor pursuant to Section 5.14.

"Credit Exposure" means, with respect to any Lender at any time, an amount equal to the aggregate principal amount of its Term Loans outstanding.

"Credit Facilities" means, collectively, one or more debt facilities (including, without limitation, the First Lien RBL Credit Agreement, this Agreement and the Junior Lien Credit Agreement), capital markets financings or other financing arrangements (including commercial paper facilities or indentures) providing for revolving credit loans, term loans, letters of credit, bankers acceptances, notes or other long-term indebtedness, including any mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof, in whole or in part, and any indentures or credit facilities or commercial paper facilities that replace, refund, supplement or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding, supplemental or refinancing facility, arrangement or indenture that increases the amount permitted to be borrowed or issued thereunder or alters the maturity thereof or adds additional borrowers or guarantors thereunder and whether by the same or any other agent, trustee, lender or group of lenders or holders.

"Credit Parties" means collectively, the Borrower and each Guarantor and each individually, a "Credit Party".

"Crude Oil" means all crude oil and condensate.

"Currency Agreement" means any Swap Agreement with respect to currency values, including foreign exchange contract, currency swap agreement or other similar agreement with respect to currency values.

"Default" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"Defaulting Lender" means any Lender that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans or (ii) pay over to the Administrative Agent or any Lender any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) has not been satisfied, (b) has notified the Borrower, the Administrative Agent or any Lender in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) cannot be satisfied), (c) has failed, within three (3) Business Days after request by the Administrative Agent, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations to fund prospective Loans under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt by the Administrative Agent of such certification in form and substance satisfactory to it and the Administrative Agent, (d) has, or has a parent that has, on or after the Effective Date, become the subject of a Bankruptcy Event or (e) becomes the subject of a Bail-In Action.

"Deposit Account Control Agreement" means a deposit account control agreement to be executed and delivered among any Credit Party, the Collateral Trustee and each bank at which such Credit Party maintains any deposit account, in each case, in accordance with such bank's standard form of control agreement and acceptable to the Collateral Trustee as to its rights and obligations, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Determination Date" means, February 28 (or February 29 in a leap year) and August 31 of each year.

"DIP Financing" means any post-petition financing under Section 364 of the Bankruptcy Code or any comparable provision of any other Bankruptcy Law.

"Disinterested Member" means, with respect to any transaction, a member of the Borrower's Board of Directors who does not have any material direct or indirect financial interest (other than as an owner of Equity Interests in the Borrower or as an officer, manager or employee of the Borrower or any Restricted Subsidiary) in or with respect to such transaction and is not an Affiliate, or an officer, director, member of a supervisory, executive or management board or employee of any Person (other than the Borrower or a Restricted Subsidiary), who has any direct or indirect financial interest in or with respect to such transaction.

"Disclosed Matters" means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.06.

"Disposition" or "Dispose" means the sale, transfer, conveyance, license, lease, farm-out, exchange or other disposition (including any sale and leaseback transaction) of any Property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Disqualified Institution" means a Person identified in writing to the Administrative Agent by the Borrower on or prior to the Effective Date, which list may be updated from time to time after the Effective Date at the request of the Borrower with the consent of the Administrative Agent (not to be unreasonably withheld or delayed). For the avoidance of doubt, the Administrative Agent shall be permitted to post the list Disqualified Institutions to the Lenders, and any additional list of Disqualified Institutions will be available for inspection by any Lender upon request to the Administrative Agent.

"Disqualified Stock" means, with respect to any Person, any Equity Interest which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event:

(a) matures or is mandatorily redeemable (other than redeemable only for Equity Interest of such Person which is not itself Disqualified Stock) pursuant to a sinking fund obligation or otherwise;

(b) is convertible or exchangeable at the option of the holder for Indebtedness or Disqualified Stock; or

(c) is mandatorily redeemable or must be purchased upon the occurrence of certain events or otherwise, in whole or in part; in each case on or prior to the 181st day after the Term Loan Maturity Date; provided, however, that any Equity Interest that would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require such Person to purchase or redeem such Equity Interest upon the occurrence of an "asset sale" or "change of control" occurring prior to the 181st day after the Term Loan Maturity Date shall not constitute Disqualified Stock if:

(1) the "asset sale" or "change of control" provisions applicable to such Equity Interest are not more favorable to the holders of such Equity Interest than the terms applicable to the Loans in Section 2.08 and 6.04 and

(2) any such requirement only becomes operative after compliance with such terms applicable to the Loans, including the prepayment or repayment of any Loans tendered pursuant thereto. The amount of any Disqualified Stock that does not have a fixed redemption, repayment or repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were redeemed, repaid or repurchased on any date on which the amount of such Disqualified Stock is to be determined pursuant to this Agreement; provided, however, that if such Disqualified Stock could not be

required to be redeemed, repaid or repurchased at the time of such determination, the redemption, repayment or repurchase price will be the book value of such Disqualified Stock as reflected in the most recent financial statements of such Person.

"Dollar-Denominated Production Payments" means production payment obligations recorded as liabilities in accordance with GAAP, together with all undertakings and obligations in connection therewith.

"Dollar Equivalent" means with respect to any monetary amount in a currency other than Dollars, at any time for determination thereof, the amount of Dollars obtained by converting such foreign currency involved in such computation into Dollars at the spot rate for the purchase of Dollars with the applicable foreign currency as published in The Wall Street Journal in the "Exchange Rates" column under the heading "Currency Trading" on the date two (2) Business Days prior to such determination. Except as described in Section 6.01, whenever it is necessary to determine whether the Borrower or any Restricted Subsidiary has complied with any covenant in this Agreement or a Default has occurred and an amount is expressed in a currency other than Dollars, such amount will be treated as the Dollar Equivalent determined as of the date such amount is initially determined in such currency.

"Dollars" or "$" refers to lawful money of the United States of America.

"Domestic Subsidiary" means, with respect to any Person, a Subsidiary of such Person that is incorporated or formed under the laws of the United States of America, any state thereof or the District of Columbia.

"Dutch Auction" has the meaning assigned to such term in Section 10.04(e).

"East Texas/North Louisiana Area" has the meaning assigned to such term in the BG Joint Development Agreement as in effect on the Effective Date and as amended or restated thereafter.

"EBG Resources" means EBG Resources, LLC, a Delaware limited liability company.

"EBITDA" for any period means the sum of Consolidated Net Income, *plus* the following to the extent deducted in calculating such Consolidated Net Income:

(a) all income tax expense of the Borrower and its consolidated Restricted Subsidiaries;

(b) Consolidated Interest Expense;

(c) depreciation, depletion, exploration and amortization (including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) expense of the Borrower and its consolidated Restricted Subsidiaries (excluding amortization of expenses attributable to a prepaid operating activity item that was paid in cash in a prior period);

(d) all other non-cash charges of the Borrower and the consolidated Restricted Subsidiaries (excluding any such non-cash charge to the extent that it represents an accrual of or reserve for cash expenditures in any future period other than non-cash charges resulting from the application of Financial Accounting Standards Board Accounting Standards Codification Subtopic 410-20 for Asset Retirement Obligations); and

(e) unrealized non-cash foreign exchange losses of the Borrower and the consolidated Restricted Subsidiaries,

in each case, for such period, and less, to the extent included in calculating such Consolidated Net Income and in excess of any costs or expenses attributable thereto and deducted in calculating such Consolidated Net Income, the sum of:

(1) the amount of deferred revenues that are amortized during such period and are attributable to reserves that are subject to Volumetric Production Payments; and

(2) amounts recorded in accordance with GAAP as repayments of principal and interest pursuant to Dollar-Denominated Production Payments.

Notwithstanding the foregoing, the provision for taxes based on the income or profits of, and the depreciation and amortization and noncash charges of, a consolidated Restricted Subsidiary shall be added to Consolidated Net Income to compute EBITDA only to the extent (and in the same proportion, including by reason of minority interests) that the net income or loss of such Restricted Subsidiary was included in calculating Consolidated Net Income and only if a corresponding amount would be permitted at the date of determination to be dividended to the Borrower by such Restricted Subsidiary without prior approval (that has not been obtained), pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to such Restricted Subsidiary or its stockholders.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Effective Date" means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 10.02).

"Eligible Assignee" means (a) a Lender, (b) an Affiliate of a Lender, (c) a Related Fund or an Approved Fund of a Lender, (d) any and all of the Backstop Commitment Parties and (e) any other Person (other than a natural person) approved by the Administrative Agent (acting at the written direction of the Majority Lenders); provided that notwithstanding the foregoing, "Eligible Assignee" shall not include the Borrower, any of the Borrower's Affiliates or a Disqualified Institution (provided, further, that the immediately preceding proviso shall not apply to Fairfax or the ESAS Parties). Notwithstanding the foregoing, each Credit Party and the Lenders acknowledge and agree that the Administrative Agent shall not have any responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Institution and the Administrative Agent shall have no liability with respect to any assignment made to a Disqualified Institution.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by 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" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Credit Party directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"EOC" means EXCO Operating Company, LP, a Delaware limited partnership and its successors and permitted assigns.

"Equity Interests" means Capital Stock and all warrants, options or other rights to acquire Capital Stock; provided that any instrument evidencing Indebtedness convertible or exchangeable into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock, shall not be deemed to be an Equity Interest unless and until such instrument is so converted or exchanged, except, solely for purposes of a pledge of Equity Interests in connection with this Agreement or any other Loan Document, to the extent such instrument could be treated as "stock" of a controlled foreign corporation for purposes of Treasury Regulation Section 1.956-2(c)(2).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with any Credit Party, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for 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" means (a) 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 thirty (30) day notice period is waived); (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) 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; (d) the incurrence by any Credit Party or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by any Credit Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by any Credit Party or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by any Credit Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Credit Party 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.

"ESAS" means Energy Strategic Advisory Services LLC, a Delaware limited liability company.

"ESAS Parties" means (a) ESAS, (b) C. John Wilder and any Affiliate of C. John Wilder, (c) any spouse or lineal descendants (whether natural or adopted) of C. John Wilder and any trust solely for the benefit of C. John Wilder and/or his spouse and/or lineal descendants.

"Event of Default" has the meaning assigned to such term in Article VIII.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Exchange Agreement" means that certain Purchase Agreement, dated as of March 15, 2017, by and between the Borrower and certain of the Lenders under the Existing Second Lien Credit Agreements and the other parties thereto as in effect on the Effective Date and all other agreements, documents, certificates and instruments delivered in connection therewith, or related thereto.

"Exchange Term Loan Agreement" has the meaning assigned to such term in the recitals hereto.

"Exchange Term Loan Amendment" means the First Amendment, dated as of March 15, 2017, to the Exchange Term Loan Agreement, among the Borrower, the lenders party thereto and Wilmington Trust, National Association, as administrative agent thereunder.

"Excluded Accounts" means deposit accounts that (a) do not contain for a period of more than three (3) Business Days, deposits in an aggregate amount in excess of $150,000, (b) are designated solely as accounts for, and are used solely for, payroll (and related payroll tax) funding, "flex" funding or similar employee benefits, sales and other tax obligations or trust funds or a Credit Party's general corporate overhead costs and expenses (including internal administrative, legal and accounting costs and expenses, except a Credit Party's expenses for

payroll and related taxes), (c) are operating accounts used solely for the purpose of accruing overnight interest, (d) are used in connection with escrow agreements or arrangements to which a Credit Party is a party, (e) that certain interest bearing escrow account held by EOC pursuant to that certain Resolution adopted by the Louisiana State Mineral and Energy Board as of August 10, 2011, or (f) the BG Operating Account.

"Excluded Information" means any non-public information with respect to the Borrower or its Subsidiaries or any of their respective securities to the extent such information could have a material effect upon, or otherwise be material to, an assigning Lender's decision to assign Loans or a purchasing Lender's decision to purchase Loans.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder or under any other Loan Document, (a) income or franchise Taxes imposed on (or measured by) its net income by the United States of America or such other jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits Taxes imposed by the United States of America or any similar Tax imposed by any other jurisdiction in which the Borrower is located, (c) in the case of a Lender (other than an assignee pursuant to a request by the Borrower under Section 2.14(b)), any U.S. federal withholding Tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Lender's failure to comply with Section 2.12(e), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts with respect to such withholding Tax pursuant to Section 2.12 and (d) any U.S. federal withholding Taxes imposed by FATCA.

"EXCO PA" means EXCO Production Company (PA), LLC, a Delaware limited liability company.

"EXCO Water" means EXCO Water Resources, LLC, a Delaware limited liability company, and its successors and assigns.

"EXCO WV" means EXCO Production Company (WV), LLC, a Delaware limited liability company.

"Existing Exchanged Loans" has the meaning specified in the recitals hereto. As of the Effective Date, the aggregate principal amount of Existing Exchanged Loans is $682,753,719.

"Existing Second Lien Credit Agreements" has the meaning specified in the recitals hereto.

"Existing Unsecured Notes" means, collectively, the Issuer's 7.500% Senior Notes due 2018 (the "2018 Notes") and 8.500% Senior Notes due 2022, in each case, as outstanding on the Effective Date.

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

"Fair Market Value" means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Disinterested Members of the Borrower's Board of Directors in good faith.

"Fairfax" means Fairfax Financial Holdings Limited, and any of its Affiliates or Subsidiaries.

"Fairfax Credit Agreement" has the meaning assigned to such term in recitals hereto.

"Farm-In Agreement" means an agreement whereby a Person agrees to pay all or a share of the drilling, completion or other expenses of an exploratory or development well (which agreement may be subject to a maximum payment obligation, after which expenses are shared in accordance with the working or participation interest therein or in accordance with the agreement of the parties) or perform the drilling, completion or other operation on such well in exchange for an ownership interest in an oil or gas property.

"Farm-Out Agreement" means a Farm-In Agreement, viewed from the standpoint of the party that transfers an ownership interest to another.

"FASB" means Financial Accounting Standards Board.

"FATCA" means Sections 1471 through 1474 of the Code, as of the Effective Date (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, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreement that implements or modifies the provisions of the foregoing (together with any law implementing such agreement).

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended.

"Federal Funds Effective Rate" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100th of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100th of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Fee Letter" means any fee letter executed and delivered by the Borrower in favor of the Administrative Agent and/or the Collateral Trustee in connection with the execution and delivery of any Loan Document, including any amendment, modification, waiver or consent to this Agreement or any other Loan Document.

"First Lien RBL Agent" means, at any time, the Person serving at such time as the "Agent" or "Administrative Agent" under the First Lien RBL Credit Agreement or any other representative then most recently designated in accordance with the applicable provisions of the First Lien RBL Credit Agreement, together with its successors in such capacity.

"First Lien RBL Amendment" means the Seventh Amendment, dated as of March 15, 2017, to the First Lien RBL Credit Agreement, among the Borrower, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent thereunder which amends the First Lien RBL Credit Agreement to, among other things, (x) provide for an aggregate amount of revolving commitments in an amount equal to $150,000,000, with other terms and economic provisions (including financial covenants and covenant levels) reasonably satisfactory to the Backstop Commitment Parties, (y) permit the maximum issuances of warrants and equity interests in the Borrower contemplated hereunder and under the Senior Secured Notes Documents and (z) provide that the Backstop Commitment Parties shall be reasonably satisfied with any new or additional lenders to be party to the First Lien RBL Credit Agreement on or after the Effective Date in connection with any permitted increase to the outstanding loans or commitments thereunder.

"First Lien RBL Credit Agreement" means that certain Amended and Restated Credit Agreement dated as of July 31, 2013 among the Borrower, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent thereunder, as the same was amended, supplemented, modified, restated, refinanced or replaced on or prior to the Effective Date and as may be amended, supplemented, modified, restated, refinanced or replaced from time to time after the Effective Date in accordance with the Intercreditor Agreement and with the same and/or different lenders and/or agents in accordance with the Intercreditor Agreement; provided that any increase in the principal amount of the Loans or Letters of Credit (each as defined in the First Lien RBL Credit Agreement) together with any other borrowings or other extensions of credit thereunder is permitted solely under Section 6.01(b)(1).

"First Lien RBL Documents" means, collectively, the First Lien RBL Credit Agreement and each security document, mortgage, note, guarantee, instrument and other "Loan Documents" (as defined in the First Lien RBL Credit Agreement) executed or delivered in connection with the First Lien RBL Credit Agreement at any time.

"First Lien RBL Lenders" means the financial institutions from time to time party to the First Lien RBL Credit Agreement as lenders.

"Foreign Lender" means any Lender that is not a U.S. Person.

"GAAP" means generally accepted accounting principles in the United States of America as in effect on the Effective Date.

"Gen IV" means Gen IV Investment Opportunities, LLC and its Affiliate Vega Asset Partners, LP.

"Governing Body" means, as to any Person, the Board of Directors or, if such Person is managed by a single entity and not a Board of Directors, the Board of Directors of the managing entity of such Person.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Governmental Requirement" means any applicable law, statute, code, ordinance, order, determination, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, authorization or other directive or requirement, whether now or hereinafter in effect, including, without limitation, Environmental Laws, energy and public utility laws and regulations and occupational, safety and health standards or controls, of any Governmental Authority.

"Guarantee" of or by any Person (in this definition, the "guarantor") means 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 of the guarantor, direct or indirect, (a) 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, (b) 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, (c) 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 (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

"Guaranteed Liabilities" has the meaning assigned to such term in Section 7.01.

"Guarantor" means Borrower (with respect to the Obligations of the other Credit Parties) and each Restricted Subsidiary that is a party hereto or hereafter executes and delivers to the Administrative Agent and the Lenders, a Counterpart Agreement pursuant to Section 5.14 or otherwise.

"Guaranty" means a Guarantee by a Guarantor of the Obligations.

"Hazardous Materials" means 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" means, with respect to any Person, the obligations of such Person under any Swap Agreement, including Currency Agreements, Interest Rate Agreements and Commodity Agreements.

"Hydrocarbons" means all Crude Oil and Natural Gas produced from or attributable to the Oil and Gas Properties of the Credit Parties.

"Incur" means issue, assume, Guarantee, incur or otherwise become liable for Indebtedness; provided, however, that any Indebtedness of a Person existing at the time such Person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Restricted Subsidiary. Notwithstanding the foregoing proviso, any Indebtedness that is extinguished, retired or repaid in connection with a Person merging with or becoming a Subsidiary of a Restricted Subsidiary will not be deemed to be the Incurrence of Indebtedness. The term "Incurrence" when used as a noun shall have a correlative meaning.

Solely for purposes of determining compliance with Section 6.01 of this Agreement the following will not be deemed to be the Incurrence of Indebtedness:

(a) amortization of debt discount or the accretion of principal with respect to a non-interest bearing or other discount security;

(b) the payment of regularly scheduled interest in the form of additional Indebtedness of the same instrument or the payment of regularly scheduled dividends on Capital Stock in the form of additional Capital Stock of the same class and with the same terms;

(c) the obligation to pay a premium in respect of Indebtedness arising in connection with the issuance of a notice of redemption or making of a mandatory offer to purchase such Indebtedness; and

(d) unrealized losses or charges in respect of Hedging Obligations (including those resulting from the application of ASC815).

"Indebtedness" means, with respect to any Person on any date of determination (without duplication):

(a) the principal in respect of (1) indebtedness of such Person for money borrowed and (2) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, including, in each case, any premium on such indebtedness to the extent such premium has become due and payable;

(b) all Capital Lease Obligations of such Person and all Attributable Debt in respect of Sale/Leaseback Transactions entered into by such Person;

(c) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business);

(d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, bankers' acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (a) through (c) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the tenth Business Day following payment on the letter of credit);

(e) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock of such Person or, with respect to any Subsidiary of such Person, the amount of all obligations of such Subsidiary with respect to any Preferred Stock of such Subsidiary, the principal amount of such Disqualified Stock or Preferred Stock to be determined in accordance with this Agreement;

(f) all obligations of the type referred to in clauses (a) through (e) above of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee;

(g) all obligations of the type referred to in clauses (a) through (f) above of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the value of such property or assets and the amount of the obligation so secured;

(h) to the extent not otherwise included in this definition, Hedging Obligations (after giving effect to any netting obligations) of such Person; and

(i) any warranties or guaranties by such Person of production or payment with respect to a Production Payment;

provided, however, that notwithstanding the foregoing, Indebtedness shall be deemed not to include (1) Contingent Obligations (other than of a type (x) referenced in clause (b)(2) of the definition thereof, (y) the primary obligation (as referenced in such definition) of which constitutes damages (of any kind whatsoever, including actual, special, direct, consequential or punitive) or a claim therefor as to which there is a reasonable possibility of an adverse determination (but excluding any such damages or claims with respect to which the applicable third party insurance provider has not denied coverage) or (z) in accordance with GAAP, that would be required to be shown on the balance sheet of any obligor as indebtedness) incurred in the ordinary course of business (provided that this clause (1) shall not apply for purposes of determining what constitutes a "primary obligation" for purposes of the definition of Contingent Obligations); (2) deferred or prepaid revenues; (3) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; (4) any obligation (but excluding any obligation constituting debt for borrowed money, including under obligations referenced under immediately preceding clauses (a) and (b)) of a Person in respect of a Farm-In Agreement, Farm-Out Agreement, joint

development arrangements or similar arrangement whereby such Person agrees to pay all or a share of the drilling, completion or other expenses of an exploratory or development well (which agreement may be subject to a maximum payment obligation, after which expenses are shared in accordance with the working or participation interest therein or in accordance with the agreement of the parties) or perform the drilling, completion or other operation on such well in exchange for an ownership interest in an Oil and Gas Property; (5) in-kind obligations relating to net oil, natural gas liquids or natural gas balancing positions arising in the ordinary course of business; (6) in the case of the Borrower and its Restricted Subsidiaries, intercompany liabilities in connection with the cash management, tax and accounting operations between and among Credit Parties; (7) any obligations in respect of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto; (8) non-compete or consulting obligations incurred in connection with any acquisition; (9) reserves for deferred income taxes; and (10) obligations with respect to prepayments received in the ordinary course of business under operating agreements, development agreements, offtake agreements or similar arrangements.

Notwithstanding anything in this Agreement to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Accounting Standards Codification Topic No. 815, Derivatives and Hedging, and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all obligations as described above; provided, however, that in the case of Indebtedness sold at a discount, the amount of such Indebtedness at any time will be the accreted value thereof at such time.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Credit Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"Indemnitee" has the meaning assigned to such term in Section 10.03.

"Independent Qualified Party" means an investment banking firm, accounting firm or appraisal firm of national standing; provided, however, that such firm is not an Affiliate of the Borrower.

"Information" has the meaning assigned to such term in Section 10.12.

"Initial Reserve Report" means collectively, the reserve report prepared by the Approved Petroleum Engineers with respect to the Proved Reserves of the Borrower and its Restricted Subsidiaries as of December 31, 2016.

"Intercreditor Agreement" means that certain Intercreditor Agreement dated as of October 19, 2015, among (after giving effect to the Intercreditor Agreement Amendment) the First Lien RBL Agent, the Priority Lien Collateral Trustee and the Collateral Trustee (and acknowledged and agreed by the Credit Parties), as the same may be amended, restated,

amended and restated, supplemented, replaced (whether upon or after termination or otherwise) modified or restated in accordance with the terms thereof. The Intercreditor Agreement as in effect on the Effective Date (after giving effect to the Intercreditor Agreement Amendment) is in the form attached hereto as Exhibit G.

"Intercreditor Agreement Amendment" means the Amendment, dated as of March 15, 2017, to the Intercreditor Agreement, among the First Lien RBL Agent and the Collateral Trustee (as defined in the Existing Second Lien Credit Agreements) (and acknowledged and agreed by the Credit Parties, the Priority Lien Collateral Trustee and the Collateral Trustee).

"Interest Payment Date" means, with respect to any Term Loan, commencing June 20, 2017, (i) March 20, June 20, September 20 and December 20 of each year and (ii) the Term Loan Maturity Date.

"Interest Rate Agreement" means any Swap Agreement with respect to exposure to interest rates, including an interest rate swap agreement, interest rate cap agreement or other financial agreement or arrangement with respect to exposure to interest rates.

"Investment" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including Guarantees of Indebtedness or other obligations), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit and advances to customers and commission, travel and similar advances to employees, directors, officers, members of management, manufacturers and consultants, in each case, made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

For purposes of the definition of "Unrestricted Subsidiary" and Section 6.02:

(a) "Investments" shall include the portion (proportionate to the Borrower's Equity Interest in such Subsidiary) of the Fair Market Value of the net assets of a Subsidiary of the Borrower at the time that such Subsidiary is designated an Unrestricted Subsidiary; provided that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Borrower shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to (1) the Borrower's "Investment" in such Subsidiary at the time of such redesignation less (2) the portion (proportionate to the Borrower's Equity Interest in such Subsidiary) of the Fair Market Value of the net assets of such Subsidiary at the time of such redesignation;

(b) any Property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer, as in each case as determined in good faith by the Board of Directors of the Borrower; and

(c) the amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced by any subsequent dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Borrower or a Restricted Subsidiary in respect of such Investment.

"Investment Grade Rating" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P or any equivalent rating by any Rating Agency.

"IRS" means the United States Internal Revenue Service.

"Junior Lien" means a Lien junior in priority to the Senior Priority Liens and the Priority Liens and equal in priority to the Junior Priority Liens, but which is junior in right of the payment waterfall (as provided in the Collateral Trust Agreement) to the Junior Priority Lien, granted by the Borrower or any Guarantor in favor of holders of Junior Lien Debt (or any collateral trustee or representative in connection therewith) at any time, upon any Property of the Borrower or any Guarantor to secure Junior Lien Obligations (provided that, in all events, such Property shall also be subject to Liens securing such aforementioned Senior Priority Liens, the Priority Liens and Junior Priority Liens).

"Junior Lien Administrative Agent" means the administrative agent under the Junior Lien Credit Agreement designated pursuant to the Junior Lien Credit Agreement, together with its successors and assigns. As of the Effective Date, the Junior Lien Administrative Agent is Wilmington Trust, National Association.

"Junior Lien Credit Agreement" means that certain Term Loan Credit Agreement dated as of October 19, 2015 among the Borrower, the lenders party thereto, the Junior Lien Administrative Agent and the Junior Lien Collateral Agent, as the same was amended on the Effective Date pursuant to the Exchange Term Loan Amendment and as the same may be amended, supplemented, modified, restated, refinanced or replaced from time to time after the Effective Date in accordance with the Collateral Trust Agreement and the Intercreditor Agreement and with the same and/or different lenders and/or agents in accordance with the Collateral Trust Agreement and the Intercreditor Agreement; provided that any increase in the principal amount of the Loans (as defined in the Junior Lien Credit Agreement) together with any other borrowings or other extensions of credit thereunder is permitted solely under Section 6.01(b)(3)(y). For the avoidance of doubt, as of the Effective Date the "Junior Lien Credit Agreement" shall be the Exchange Term Loan Agreement, as amended pursuant to the Exchange Term Loan Amendment.

"Junior Lien Collateral Agent" means the collateral trustee or other representative of lenders or holders of Junior Lien Obligations designated pursuant to the terms of the Junior Lien Documents, the Collateral Trust Agreement and the Intercreditor Agreement, in each case, together with its successors and assigns. The initial Junior Lien Collateral Agent shall be the Collateral Trustee.

"Junior Lien Debt" means (a) the Indebtedness and other Obligations (as defined in the Junior Lien Credit Agreement) under the Junior Lien Credit Agreement and (b) any Indebtedness (other than intercompany Indebtedness owing to the Borrower or its Subsidiaries) of the Borrower or any Guarantor permitted to be Incurred under Section 6.01(b)(3)(y) or (z) (including any Refinancing Indebtedness with respect to Junior Lien Debt with other Junior Lien Debt to the extent contemplated and permitted by the Intercreditor Agreement and the Collateral Trust Agreement) that is secured by a Junior Lien and that is permitted to be Incurred and so

secured under each applicable Secured Debt Document; provided that, in the case of any Indebtedness referred to in clause (b) of this definition:

(a) (i) such Indebtedness does not mature and does not have any mandatory or scheduled payments or sinking fund obligations prior to one-hundred eighty (180) days after the Term Loan Maturity Date (except as a result of a customary change of control, events of loss or asset sale repurchase offer provisions) and (ii) the principal amount of such Indebtedness does not exceed the principal amount of, plus any accrued and unpaid interest on, the Junior Lien Obligations being refinanced or exchanged;

(b) on or before the date on which any such Indebtedness is Incurred by the Borrower or any Guarantor, such Indebtedness is designated by the Borrower, in an Officers' Certificate delivered to the Junior Priority Lien Collateral Agent and Collateral Trustee, as "Junior Lien Debt," and such Officers' Certificate also certifies that such Indebtedness is permitted and with respect to any other requirements set forth in the Intercreditor Agreement;

(c) a Junior Lien Representative is designated with respect to such Indebtedness and executes and delivers an Additional Secured Debt Designation on behalf of itself and all holders of such Indebtedness;

(d) all relevant filings and recordations necessary to ensure that such Indebtedness is secured by the Collateral in accordance with the applicable security documents are authorized, executed (if applicable) and recorded in each appropriate jurisdiction (provided that this clause (d) may be satisfied on a post-closing basis if permitted by the Junior Lien Representative); and

(e) all other requirements set forth in the Intercreditor Agreement and in any applicable security documents as to the confirmation, grant or perfection of the Liens of the holders of Junior Lien Debt to secure such Indebtedness or obligations in respect thereof are satisfied;

provided that, unless the Administrative Agent shall otherwise agree in writing (acting at the written direction of the Majority Lenders), all such Indebtedness (other than any DIP Financing that is permitted by the Intercreditor Agreement and other than, for the avoidance of doubt, the Junior Priority Lien Debt) shall be *pari passu* in right of payment, it being understood that there may be different tranches of Junior Lien Debt with different maturities and amortization profiles, but, unless the Administrative Agent otherwise agree in writing (acting at the written direction of the Majority Lenders), the principal amount of Indebtedness under all such tranches must in all other respects be *pari passu* in right of payment. Any such Indebtedness (other than any such DIP Financing) that is not consistent with the foregoing condition for *pari passu* treatment in right of payment with the loans under the Junior Priority Lien Documents shall not constitute Junior Lien Debt.

"Junior Lien Documents" means, collectively, the Loan Documents (as defined in the Junior Lien Credit Agreement), any indenture, credit agreement or other agreement or instrument pursuant to which Junior Lien Debt is Incurred and the documents pursuant to which Junior Lien Obligations are granted.

"Junior Lien Obligations" means Junior Lien Debt and all other principal (including reimbursement obligations and obligations to provide cash collateral with respect to letters of credit whether or not drawn), interest (including, to the extent legally permitted, all interest accrued thereon after the commencement of any insolvency or liquidation proceeding at the rate, including any applicable post-default rate even if such interest is not enforceable, allowable or allowed as a claim in such proceeding), premium (if any), fees, indemnifications, reimbursements, expenses, and other liabilities in respect thereof.

"Junior Lien Representative" means, (a) in the case of the Junior Lien Credit Agreement, the Junior Lien Administrative Agent, and (b) in the case of any other Series of Junior Lien Debt, the trustee, agent or representative of the holders of such Series of Junior Lien Debt who maintains the transfer register for such Series of Junior Lien Debt and is appointed as a representative of the Junior Lien Debt (for purposes related to the administration of the security documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Junior Lien Debt.

"Junior Priority Lien" means a Lien junior in priority to the Senior Priority Liens and the Priority Liens and senior in priority to the Junior Liens, in each case, as provided in the Intercreditor Agreement, granted by the Borrower or any Guarantor in favor of holders of Junior Priority Lien Debt (or any collateral trustee or representative in connection therewith) at any time, upon any Property of the Borrower or any Guarantor to secure Junior Priority Lien Obligations (provided that, in all events, such Property shall also be subject to Liens securing such aforementioned Senior Priority Liens and Priority Liens).

"Junior Priority Lien Collateral Agent" means the collateral trustee or other representative of lenders or holders of Junior Priority Lien Obligations designated pursuant to the terms of the Junior Priority Lien Documents and the Intercreditor Agreement, in each case, together with its successors and assigns. As of the Effective Date the Junior Priority Lien Collateral Agent is the Collateral Agent.

"Junior Priority Lien Debt" means (a) the Indebtedness and other Obligations under this Agreement and the other Loan Documents and (b) any other Indebtedness (other than intercompany Indebtedness owing to the Borrower or its Subsidiaries) of the Borrower or any Guarantor permitted to be Incurred under Section 6.01(b)(3)(x) (including any Refinancing Indebtedness with respect to Junior Priority Lien Debt with other Junior Priority Lien Debt to the extent contemplated and permitted by the Intercreditor Agreement) that is secured by a Junior Priority Lien and that is permitted to be Incurred and so secured under each applicable Secured Debt Document; provided that, in the case of any Indebtedness referred to in clause (b) of this definition:

(1) (i) such Indebtedness does not mature and does not have any mandatory or scheduled payments or sinking fund obligations prior to one-hundred eighty (180) days after the Term Loan Maturity Date (except as a result of a customary change of control or asset sale repurchase offer provisions) and (ii) the principal amount of such Indebtedness does not exceed the principal amount of, plus any accrued and unpaid interest on, the Junior Priority Lien Obligations being refinanced or exchanged;

(2) on or before the date on which any such Indebtedness is Incurred by the Borrower or any Guarantor, such Indebtedness is designated by the Borrower, in an Officers' Certificate delivered to the Junior Priority Lien Collateral Agent and Collateral Trustee, as "Junior Priority Lien Debt," and such Officers' Certificate also certifies that such Indebtedness is permitted and with respect to any other requirements set forth in the Intercreditor Agreement;

(3) a Junior Priority Lien Representative is designated with respect to such Indebtedness and executes and delivers an Additional Secured Debt Designation on behalf of itself and all holders of such Indebtedness;

(4) all relevant filings and recordations necessary to ensure that such Indebtedness is secured by the Collateral in accordance with the applicable security documents are authorized, executed (if applicable) and recorded in each appropriate jurisdiction (provided that this clause (5) may be satisfied on a post-closing basis if permitted by the Junior Priority Lien Representative); and

(5) all other requirements set forth in the Collateral Trust Agreement and in any applicable security documents as to the confirmation, grant or perfection of the Liens of the holders of Junior Priority Lien Debt to secure such Indebtedness or obligations in respect thereof are satisfied.

provided that, unless the Administrative Agent shall otherwise agree in writing (acting at the written direction of the Majority Lenders), all such Indebtedness (other than any DIP Financing that is permitted by the Intercreditor Agreement and, for the avoidance of doubt, Junior Lien Debt) shall be *pari passu* in right of payment, it being understood that there may be different tranches of Junior Priority Lien Debt with different maturities and amortization profiles, but, unless the Administrative Agent otherwise agrees in writing (acting at the written direction of the Majority Lenders), the principal amount of Indebtedness under all such tranches must in all other respects be *pari passu* in right of payment. Any such Indebtedness (other than any such DIP Financing) that is not consistent with the foregoing condition for *pari passu* treatment in right of payment with the revolving credit loans under the Junior Priority Lien Documents shall not constitute Junior Priority Lien Debt

"Junior Priority Lien Documents" means, collectively, any indenture, credit agreement or other agreement or instrument pursuant to which Junior Priority Lien Debt is Incurred and the documents pursuant to which Junior Priority Lien Obligations are granted. As of the Effective Date the Loan Documents constitute Junior Priority Lien Documents.

"Junior Priority Lien Obligations" means Junior Priority Lien Debt and all other principal (including reimbursement obligations and obligations to provide cash collateral with respect to letters of credit whether or not drawn), interest (including, to the extent legally permitted, all interest accrued thereon after the commencement of any insolvency or liquidation proceeding at the rate, including any applicable post-default rate even if such interest is not enforceable, allowable or allowed as a claim in such proceeding), premium (if any), fees, indemnifications, reimbursements, expenses, and other liabilities in respect thereof. As of the Effective Date the Obligations constitute Junior Priority Lien Obligations.

"Junior Priority Lien Representative" means, in the case of any Series of Junior Priority Lien Debt, the trustee, agent or representative of the holders of such Series of Junior Priority Lien Debt who maintains the transfer register for such Series of Junior Priority Lien Debt and is appointed as a representative of the Junior Priority Lien Debt (for purposes related to the administration of the security documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Junior Priority Lien Debt. As of the Effective Date, the Junior Priority Lien Representative in respect of the Loan Documents is the Administrative Agent.

"Lenders" means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

"Liabilities" means, as to any Person, all indebtedness, liabilities and obligations of such Person, whether matured or unmatured, liquidated or unliquidated, primary or secondary, direct or indirect, absolute, fixed or contingent, and whether or not required to be considered pursuant to GAAP.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Liquidity" means an amount equal to (a) the sum of (1) the Borrower's Unrestricted Cash and Cash Equivalents and (2) any amounts available to be borrowed under the First Lien RBL Credit Agreement (to the extent then available) less (b) the face amount of any letters of credit outstanding under the First Lien RBL Credit Agreement. With respect to any Interest Payment Date, Liquidity shall be calculated on a pro forma basis after giving effect to any payment of cash interest on the Senior Secured Notes and Cash Interest on the Term Loans expected to be paid on the relevant Interest Payment Date.

"Loan Documents" means this Agreement, any promissory notes executed in connection herewith, the Security Instruments, any Fee Letter, the Intercreditor Agreement, the Intercreditor Agreement Amendment, the Collateral Trust Agreement and all other agreements, instruments, documents and certificates now or hereafter executed and delivered by a Credit Party to, or in favor of, the Administrative Agent, the Collateral Trustee or any Lender in connection with this Agreement or the transactions contemplated hereby.

"Loans" means the loans made by the Lenders to the Borrower pursuant to this Agreement and shall include the Term Loans.

"Majority Lenders" means, (a) at any time where Fairfax has Credit Exposures representing more than fifty percent (50%) of the sum of the Aggregate Credit Exposure,

Hamblin Watsa Investment Counsel, Ltd., acting on behalf of its Affiliates that are Lenders or (b) at any time the condition in clause (a) of this definition is not met, Lenders having Credit Exposures representing more than fifty percent (50%) of the sum of the Aggregate Credit Exposure. The Credit Exposures of any Defaulting Lender shall be disregarded in determining Majority Lenders at any time.

"Make-Whole Amount" means (x) in the case of the Term Loans attributable to the exchange of the Tranche A Exchange Term Loans, with respect to any applicable repayment date, the greater of (a) 1.0% of the principal amount of the applicable Term Loans prepaid; and (b) the excess of (1) the present value at such repayment date of (i) the prepayment price of the applicable Term Loans at October 26, 2018 (such prepayment price being set forth in the table appearing in Section 2.07 hereof) plus (ii) all interest that would have accrued on the applicable Term Loans from the date of repayment through October 26, 2018, computed using a discount rate equal to the Adjusted Treasury Rate as of such repayment date plus 50 basis points discounted to the repayment date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months), over (2) the principal amount of the applicable Term Loans prepaid and (y) in the case of the Term Loans attributable to the exchange of the Tranche A Fairfax Term Loans, with respect to any applicable repayment date, with respect to any payment of such Term Loans, an amount equal to all interest payments which would have accrued, from the date of such payment through the Term Loan Maturity Date, on an amount equal to such Term Loans being paid, such interest to be calculated on such amount at the rate of Cash Interest in effect on such payment date, without giving effect to any default rate interest which would be due under Section 2.10(b) hereunder.

"Marcellus Development Costs" means the costs and expenses incurred in the conduct of development operations in the Appalachian Area pursuant to the Marcellus JV Documents.

"Marcellus Holding Companies" means one or more Unrestricted Subsidiaries formed in connection with the Marcellus Joint Venture to facilitate the transfer of an undivided 49.75% interest in the Marcellus JV Oil and Gas Assets to the Marcellus JV Partner.

"Marcellus Joint Development Agreement" means that certain Joint Development Agreement dated as of June 1, 2010, among one or more of the Borrower's Subsidiaries, the Marcellus JV Partner, the Marcellus Holding Companies and the Marcellus JV Operator with respect to the Marcellus Joint Venture.

"Marcellus Joint Venture" means that certain joint venture arrangement between the Borrower and one or more of its Subsidiaries and an unrelated third party (the "Marcellus JV Partner") and one or more of its Subsidiaries to develop and operate the Marcellus JV Oil and Gas Assets.

"Marcellus JV Closing Date" means June 1, 2010.

"Marcellus JV Documents" means the Marcellus Joint Development Agreement, the Marcellus Operator LLC Agreement, the Marcellus Midstream LLC Agreement, the Marcellus Transfer Agreement and any other documents, instruments, agreements or certificates contemplated by, or executed in connection with, the Marcellus Joint Development Agreement, in each case, as the same may be amended, modified or supplemented from time to time.

"Marcellus JV Oil and Gas Assets" has the meaning assigned to the term "Subject Oil and Gas Assets" in the Marcellus Joint Development Agreement as in effect on the Marcellus JV Closing Date and as amended or restated thereafter so long as the Administrative Agent receives an executed copy of any agreement evidencing any amendment or restatement of such definition (or any definition used in such definition).

"Marcellus JV Operator" means the operator of the Marcellus JV Oil and Gas Assets located in the Appalachian Area.

"Marcellus JV Partner" has the meaning assigned to such term in the definition of "Marcellus Joint Venture".

"Marcellus Midstream Assets" means the gas gathering and pipeline systems and related facilities associated with the Marcellus Shale portion of the Marcellus JV Oil and Gas Assets.

"Marcellus Midstream LLC Agreement" means that certain Second Amended and Restated Limited Liability Company Agreement of Marcellus Midstream Owner, dated as of June 1, 2010, as such Limited Liability Company Agreement may thereafter be amended, supplemented or otherwise modified from time to time.

"Marcellus Midstream Owner" means the direct or indirect owner of the Marcellus Midstream Assets.

"Marcellus Operator LLC Agreement" means that certain Second Amended and Restated Limited Liability Company Agreement of the Marcellus JV Operator dated as of June 1, 2010.

"Marcellus Shale" means (a) with respect to the Commonwealth of Pennsylvania, those subsurface depths that are below the base of (but excluding) the Haskill Sandstone Formation (Base of Elk Sequence) formation at a measured depth of 2,758', as identified by the Litho Density Compensated Neutron Array Induction Temperature Log dated June 7, 2005 of the Seneca Resources operated Fee PGS SGL No. 44 (API 37-047-23649) located in Elk County, Pennsylvania, (b) with respect to the State of West Virginia, those subsurface depths that are below the base of (but excluding) the Brallier Formation (Base of Elk Sequence) formation at a measured depth of 6,612', as identified by the Litho Density Compensated Neutron Array Induction Temperature Log dated October 8, 2008 of the EXCO – North Coast Energy, Inc. operated Wentz 4HS (API 47-001-02982) located in Barbour County, West Virginia, recognizing that actual depths may vary, and (c) with respect to the State of New York, those subsurface depths that are below the base of (but excluding) the Genesee Formation at a measured depth of 2,548', as identified by the Density/Neutron, Gamma/Temperature Log dated May 6, 2005 of the Fortuna Energy, Inc. operated Cotton-Hanlon #1 well (API 31-107-23185) located in Tioga County, New York.

"Marcellus Transfer Agreement" means that certain Membership Interest Transfer Agreement dated as of June 1, 2010, among the Borrower or one or more of its Restricted Subsidiaries and the Marcellus JV Partner pursuant to which the Borrower or one or more of its Restricted Subsidiaries transfers to the Marcellus JV Partner (a) 100% of the Equity Interests of the Marcellus Holding Companies and (b) 50% of the Equity Interests of each of the Marcellus JV Operator and the Marcellus Midstream Owner.

"Material Adverse Effect" means a material adverse effect on (a) the assets or properties, financial condition, businesses or operations of the Borrower and the Restricted Subsidiaries taken as a whole, (b) the ability of any Credit Party to carry out its business as of the date of this Agreement or as proposed at the date of this Agreement to be conducted, (c) the ability of any Credit Party to perform fully and on a timely basis its respective obligations under any of the Loan Documents to which it is a party, or (d) the validity or enforceability of any of the Loan Documents or the rights and remedies of the Administrative Agent, the Collateral Trustee or the Lenders under this Agreement and the other Loan Documents.

"Material Domestic Subsidiary" means any Domestic Subsidiary of the Borrower that owns or holds, directly or indirectly, assets, properties or interests (including Oil and Gas Properties, whether owned directly or indirectly) with an aggregate fair market value, on a consolidated basis, greater than five percent (5%) of the aggregate fair market value of all of the assets, properties and interests (including Oil and Gas Properties, whether owned directly or indirectly) of the Borrower and the Restricted Subsidiaries, on a consolidated basis; provided that if the aggregate fair market value of all of the assets, properties and interests (including Oil and Gas Properties, whether owned directly or indirectly) of all Domestic Subsidiaries that would not constitute Material Domestic Subsidiaries exceeds 5% of the aggregate fair market value of all of the assets, properties and interests (including Oil and Gas Properties, whether owned directly or indirectly) of the Borrower and the Restricted Subsidiaries, on a consolidated basis, then one or more of such excluded Domestic Subsidiaries shall for all purposes of this Agreement be deemed to be Material Domestic Subsidiaries in descending order based on the aggregate fair market value of their assets, properties or interests (including Oil and Gas Properties, whether owned directly or indirectly) until such excess has been eliminated.

"Material Indebtedness" means Indebtedness under the First Lien RBL Documents, the Senior Secured Notes Documents, the Junior Lien Documents, and the Existing Unsecured Notes (and, in each case, any Refinancing Indebtedness in respect thereof) and any other Indebtedness (other than the Loans) of the Borrower or any one or more of the Restricted Subsidiaries that in each case is in an aggregate principal amount exceeding $10,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Borrower or any Guarantor in respect of any Hedging Obligations at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Guarantor would be required to pay if the agreements with respect to such Hedging Obligations were terminated at such time.

"Material Sales Contract" means, as of any date of determination, any agreement for the sale of Hydrocarbons from the Oil and Gas Properties to which the Borrower or any Restricted Subsidiary is a party if the aggregate volume of Hydrocarbons sold pursuant to such agreement during the twelve (12) months immediately preceding such date equals or exceeds

ten percent (10%) of the aggregate volume of Hydrocarbons sold by the Borrower and the Restricted Subsidiaries, on a consolidated basis, from the Oil and Gas Properties during the twelve (12) months immediately preceding such date.

"Maximum Liability" has the meaning assigned to such term in Section 7.10.

"Maximum Rate" has the meaning assigned to such term in Section 10.13.

"Minimum Mortgaged Value" has the meaning assigned to such term in Section 5.12(d).

"Moody's" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"Mortgaged Properties" means the Oil and Gas Properties described in one or more duly executed, delivered and filed Mortgages evidencing a Lien prior and superior in right to any other Person (other than the Senior Priority Lien Collateral Agent and the Priority Lien Collateral Agent) in favor of the Collateral Trustee for the benefit of the Secured Parties and subject only to the Liens permitted pursuant to Section 6.07.

"Mortgages" means all mortgages, deeds of trust, amendments to mortgages, security agreements, assignments of production, pledge agreements, collateral mortgages, collateral chattel mortgages, collateral assignments, financing statements and other documents, instruments and agreements evidencing, creating, perfecting or otherwise establishing the Liens required by Section 5.12. All Mortgages shall be in form and substance satisfactory to Administrative Agent in its sole discretion.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Natural Gas" means all natural gas, distillate or sulphur, natural gas liquids and all products recovered in the processing of natural gas (other than condensate) including, without limitation, natural gasoline, coalbed methane gas, casinghead gas, iso-butane, normal butane, propane and ethane (including such methane allowable in commercial ethane).

"Net Cash Proceeds" means:

(a) with respect to any issuance, Incurrence or Disposition of Capital Stock or Indebtedness, the cash proceeds of such issuance Incurrence or Disposition net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, discounts or commissions and brokerage, consultant and other fees actually incurred in connection with such issuance, Incurrence or Disposition and net of taxes paid or payable as a result thereof; and

(b) with respect to any Asset Sale, cash payments received therefrom, including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise and cash proceeds from the sale or other disposition of any non-cash consideration received as consideration, but only as and

when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Indebtedness or other obligations relating to such properties, in each case net of (without duplication):

(1) all legal, title and recording tax expenses, commissions and other fees and expenses incurred, including without limitation, all attorney's fees, accountants' fees, advisors' or other consultants' fees and other fees actually incurred in connection therewith, and all federal, state, provincial, foreign and local taxes required to be accrued as a liability under GAAP, as a consequence of such Asset Sale;

(2) all payments made on any Indebtedness which is secured by any assets subject to such Asset Sale, in accordance with the terms of any Lien upon or other security agreement of any kind with respect to such assets, or which must by its terms, or in order to obtain a necessary consent to such Asset Sale, or by applicable law, be repaid out of the proceeds from such Asset Sale;

(3) all distributions and other payments required to be made to minority interest holders in Restricted Subsidiaries or to holders of royalties or similar interests as a result of such Asset Sale;

(4) the deduction of appropriate amounts provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the property or other assets disposed in such Asset Sale and retained by the Borrower or any Restricted Subsidiary after such Asset Sale; and

(5) any portion of the purchase price from an Asset Sale placed in escrow, whether as a reserve for adjustment of the purchase price, for satisfaction of indemnities in respect of such Asset Sale or otherwise in connection with that Asset Sale; provided, however, that upon the termination of that escrow, Net Cash Proceeds will be increased by any portion of funds in the escrow that are released to the Borrower or any Restricted Subsidiary.

provided that, with respect to proceeds of any Asset Sale that are not applied or invested as provided in Section 2.08(a), no such unapplied or uninvested proceeds shall constitute Net Cash Proceeds until the aggregate amount of all such unapplied or uninvested proceeds shall exceed $20,000,000, and then all of such unapplied or uninvested proceeds shall constitute Net Cash Proceeds.

"Net Working Capital" means (a) all current assets of the Borrower and all of its Restricted Subsidiaries excluding current assets under any Commodity Agreements less (b) all current liabilities of the Borrower and all of its Restricted Subsidiaries, excluding (1) the current liabilities included in Indebtedness and (ii) any current liabilities under any Commodity Agreements, in each case as set forth in the consolidated financial statements of the Borrower prepared in accordance with GAAP.

"Non-Consenting Lender" has the meaning assigned to such term in Section 2.14(c).

"Non-Credit Party Restricted Subsidiary" means a Restricted Subsidiary of the Borrower that is not a Credit Party.

"Non-Recourse Debt" means Indebtedness:

(a) as to which neither the Borrower nor any of its Restricted Subsidiaries (1) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (2) is directly or indirectly liable as a guarantor, surety or otherwise or (3) constitutes a lender;

(b) as to which the lenders thereof will not have any recourse to the Equity Interests or Property of the Borrower or any of its Restricted Subsidiaries (other than the Equity Interests of an Unrestricted Subsidiary (to the extent such Unrestricted Subsidiary is the borrower or guarantor of such Non-Recourse Debt)); and

(c) no default or event of default with respect to which (including any rights that the holders thereof may have to take enforcement action against an Unrestricted Subsidiary) would permit upon notice, lapse of time or both any holder of any other Indebtedness of the Borrower or any of its Restricted Subsidiaries to declare a default or event of default on such other Indebtedness or cause the payment, repurchase, redemption, defeasance or other acquisition or retirement for value thereof to be accelerated or payable prior to any scheduled principal payment, scheduled sinking fund payment or stated maturity.

"Non-Recourse Purchase Money Indebtedness" means Indebtedness (other than Capital Lease Obligations) of the Borrower or any Guarantor incurred in connection with the acquisition by the Borrower or such Guarantor in the ordinary course of business of fixed assets used in the Oil and Gas Business (including office buildings and other real property used by the Borrower or such Guarantor in conducting its operations) with respect to which:

(a) the holders of such Indebtedness agree that they will look solely to the fixed assets so acquired which secure such Indebtedness, and neither the Borrower nor any Restricted Subsidiary (1) is directly or indirectly liable for such Indebtedness (whether as a guarantor, surety or otherwise) or (2) provides credit support, including any undertaking, Guarantee, agreement or instrument that would constitute Indebtedness (other than the grant of a Lien on such acquired fixed assets); and

(b) no default or event of default with respect to such Indebtedness would cause, or permit (after notice or passage of time or otherwise), any holder of any other Indebtedness of the Borrower or a Guarantor to declare a default or event of default on such other Indebtedness or cause the payment, repurchase, redemption, defeasance or other acquisition or retirement for value thereof to be accelerated or payable prior to any scheduled principal payment, scheduled sinking fund payment or stated maturity.

"NYMEX" means the New York Mercantile Exchange.

"NYMEX Prices" means, as of any date of determination, the forward month prices for the most comparable hydrocarbon commodity applicable to such future production

month for a sixty month period (or such shorter period if forward month prices are not quoted for a reasonably comparable hydrocarbon commodity for the full sixty month period), with such prices increased by five percent of the last quoted forward month price of such period for the sixty first month and then held constant thereafter, as such prices are (a) quoted on the NYMEX (or its successor) calculated as of a date not more than thirty (30) days prior to the date of determination (the "calculation date") and (b) adjusted for energy content, quality and basis differentials; provided that with respect to estimated future production for which prices are defined, within the meaning of SEC guidelines, by contractual arrangements excluding escalations based upon future conditions, then such contract prices shall be applied to future production subject to such arrangements.

"Obligations" means any and all obligations of every nature, contingent or otherwise, whether now existing or hereafter arising, of the Borrower or any other Credit Party from time to time owed under any Loan Document, whether for principal, interest, funding indemnification amounts, fees, premium (including, for the avoidance of doubt, any Make-Whole Amount), expenses (including reasonable fees and expenses of attorneys, agents and advisors), indemnification or otherwise.

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

"Officers' Certificate" means a certificate signed on behalf of the Borrower by any two Responsible Officers of the Borrower, one of whom must be either the principal executive officer, the chief financial officer, chief accounting officer, principal accounting officer, controller, treasurer or assistant treasurer of the Borrower, in a form reasonably acceptable to the Administrative Agent.

"Oil and Gas Business" means:

(a) the acquisition, exploration, exploitation, development, operation and disposition of interests in Hydrocarbons;

(b) the gathering, marketing, distribution, treating, processing, storage, refining, selling and transporting of any production from such interests or properties and the marketing of Hydrocarbons obtained from unrelated Persons;

(c) any business relating to or arising from exploration for or exploitation, development, production, treatment, processing, storage, refining, transportation, gathering or marketing of Hydrocarbons and products produced in association therewith;

(d) any other related energy business, including power generation and electrical transmission business where fuel required by such business is supplied, directly or indirectly, from Hydrocarbons produced substantially from properties in which the Borrower or the Restricted Subsidiaries, directly or indirectly, participate;

(e) any business relating to oil field sales and service; and

(f) any activity necessary, appropriate or incidental to the activities described in the preceding clauses (a) through (e) of this definition.

"Oil and Gas Property" means: (a) direct and indirect interests in and rights with respect to oil, gas, mineral and related properties and assets of any kind and nature, direct or indirect, including, without limitation, wellbore interests, working, royalty and overriding royalty interests, mineral interests, leasehold interests, production payments, operating rights, net profits interests, other non-working interests, contractual interests, non-operating interests and rights in any pooled, unitized or communitized acreage by virtue of such interest being a part thereof; (b) interests in and rights with respect to Hydrocarbons other minerals or revenues therefrom and contracts and agreements in connection therewith and claims and rights thereto (including oil and gas leases, operating agreements, unitization, communitization and pooling agreements and orders, division orders, transfer orders, mineral deeds, royalty deeds, oil and gas sales, exchange and processing contracts and agreements and, in each case, interests thereunder), and surface interests, fee interests, reversionary interests, reservations and concessions related to any of the foregoing; (c) easements, rights-of-way, licenses, permits, leases, and other interests associated with, appurtenant to, or necessary for the operation of any of the foregoing; (d) interests in oil, gas, water, disposal and injection wells, equipment and machinery (including well equipment and machinery), oil and gas production, gathering, transmission, compression, treating, processing and storage facilities (including tanks, tank batteries, pipelines and gathering systems), pumps, water plants, electric plants, gasoline and gas processing plants, refineries and other tangible or intangible, movable or immovable, real or personal property and fixtures located on, associated with, appurtenant to, or necessary for the operation of any of the foregoing; and (e) all seismic, geological, geophysical and engineering records, data, information, maps, licenses and interpretations.

"Organizational Documents" means (a) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, (b) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (c) with respect to any general partnership, its partnership agreement, as amended, and (d) with respect to any limited liability company, its certificate of formation or articles of organization, as amended, and its limited liability company agreement or operating agreement, as amended.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Taxes (other than a connection arising from such Recipient having executed, delivered, enforced, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, or engaged in any other transaction pursuant to, or enforced, any Loan Document), or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means any present or future stamp, court, documentary, intangible, recording, filing or similar excise or property Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, or from the registration, receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.12(b)).

"Participant" has the meaning assigned to such term in Section 10.04.

"Participant Register" has the meaning assigned to such term in Section 10.04.

"Payment Currency" has the meaning assigned to such term in Section 7.07.

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Acquisition Indebtedness" means Indebtedness of the Borrower or any of its Restricted Subsidiaries in an aggregate principal amount outstanding not to exceed $60,000,000 (less the aggregate principal amount outstanding pursuant to Section 6.01(b)(7) to the extent constituting Refinancing Indebtedness of Permitted Acquisition Indebtedness) (the foregoing cap, the "Permitted Acquisition Indebtedness Dollar Cap") any time and solely to the extent such Indebtedness was Indebtedness of:

(a) an acquired Person Incurred prior to the date on which such Person became a Restricted Subsidiary as a result of having been acquired and not Incurred in contemplation of such acquisition, or

(b) a Person that was merged, consolidated or amalgamated with or into the Borrower or a Restricted Subsidiary and was not Incurred in contemplation of such merger, consolidation or amalgamation.

provided on the date such Person became a Restricted Subsidiary or the date such Person was merged, consolidated or amalgamated with or into the Borrower or a Restricted Subsidiary, as applicable, if, after giving pro forma effect thereto, the Consolidated Coverage Ratio either (x) equals or exceeds 2.25 to 1.00 or (y) is greater than the Consolidated Coverage Ratio immediately prior to such transaction.

"Permitted Business Investments" means Investments and expenditures in respect of Unproved Reserves made in the ordinary course of, and of a nature that is or shall have become customary in, the Oil and Gas Business as means of actively exploiting, exploring for, acquiring, developing, processing, gathering, marketing or transporting Hydrocarbons through agreements, transactions, interests or arrangements that permit one to share risks or costs, comply with regulatory requirements regarding local ownership or satisfy other objectives customarily achieved through the conduct of the Oil and Gas Business jointly with third parties, including:

(a) ownership interests in Oil and Gas Properties or gathering, transportation, processing, storage or related systems; and

(b) entry into, and Investments and expenditures in the form of or pursuant to, operating agreements, joint venture agreements (including, without limitation, those relating to the Marcellus Midstream Owner), partnership agreements, working interests,

royalty interests, mineral leases, processing agreements, Farm-In Agreements, Farm-Out Agreements, contracts for the sale, transportation or exchange of Hydrocarbons, production sharing agreements, development agreements (including without limitation the BG Joint Development Agreement and the Marcellus Joint Development Agreement), area of mutual interest agreements, unitization agreements, pooling arrangements, joint bidding agreements, service contracts and other similar agreements with third parties (including Unrestricted Subsidiaries), excluding, however, Investments in any corporation or publicly traded partnership or limited liability company.

"Permitted Investment" means:

(a) Investments by (i) a Credit Party in another Credit Party or a Person that will, together with all of such Person's Subsidiaries, upon the making of such Investment, become Credit Parties (other than any of such Person's Subsidiaries that are designated as Unrestricted Subsidiaries in accordance with the terms of this Agreement), (ii) by a Non-Credit Party Restricted Subsidiary in another Non-Credit Party Restricted Subsidiary, (iii) by a Non-Credit Party Restricted Subsidiary in a Credit Party; and (iv) by a Credit Party in a Non-Credit Party Restricted Subsidiary in an aggregate amount, together with all other Investments made pursuant to this clause (a)(iv) since the Effective Date, not in excess of $30,000,000; provided, that to the extent constituting Indebtedness, any such Investment under this clause (a) shall be made in accordance with Section 6.01(b)(4);

(b) Investments in another Person (1) if, as a result of such Investment, such other Person is merged or consolidated with or into, or transfers or conveys all or substantially all its assets to, the Borrower or another Credit Party (and so long as (A) the Borrower or such other Credit Party is the survivor of any such merger or consolidation and (B) in connection with any such Investment all of such Person's Subsidiaries, upon the making of such Investment, will become Credit Parties (other than any of such Person's Subsidiaries that are designated as Unrestricted Subsidiaries in accordance with the terms of this Agreement)) or (2) for consideration consisting solely of Capital Stock of the Borrower; provided, that, in both cases, such Person's primary business is a Related Business and provided, further, the aggregate amount of all such Investments shall not exceed $30,000,000 during the term of the Loans;

(c) Investments in cash and Temporary Cash Investments;

(d) receivables owing to the Borrower or any Restricted Subsidiary if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided, however, that such trade terms may include such concessionary trade terms as the Borrower or any such Restricted Subsidiary deems reasonable under the circumstances;

(e) payroll, commission, travel, relocation and similar advances to officers directors and employees to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(f) loans or advances to employees made in the ordinary course of business consistent with past practices of the Borrower or such Restricted Subsidiary but in any event not to exceed $3,000,000 in the aggregate outstanding at any one time;

(g) stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Borrower or any Restricted Subsidiary or in satisfaction of judgments;

(h) Investments in any Person to the extent such Investment represents the non-cash portion of the consideration received for (1) an Asset Sale as permitted pursuant to Section 6.04 or (2) a disposition of assets not constituting an Asset Sale;

(i) Investments in any Person where such Investment was acquired by the Borrower or any of the Restricted Subsidiaries (1) in exchange for any other Investment or accounts receivable held by the Borrower or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable or (2) as a result of a foreclosure by the Borrower or any of the Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(j) Investments in any Person to the extent such Investments consist of prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits made in the ordinary course of business by the Borrower or any Restricted Subsidiary;

(k) Investments in any Person to the extent such Investments consist of Hedging Obligations otherwise permitted under Section 6.01;

(l) Investments in any Person to the extent such Investment (1) exists on the Effective Date or (2) is an extension, modification or renewal of any such Investments described under the immediately preceding clause (1) but only to the extent not involving additional advances, contributions or other Investments of cash or other assets or other increases thereof (other than as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities, in each case, pursuant to the terms of such Investment as in effect on the Effective Date);

(m) Permitted Business Investments;

(n) Guarantees issued in accordance with Sections 5.14 and 6.01;

(o) Guarantees of performance or other obligations (other than Indebtedness) arising in the ordinary course in the Oil and Gas Business, including obligations under oil and natural gas exploration, development, joint operating and related agreements and licenses or concessions related to the Oil and Gas Business;

(p) any Investment consisting of purchases and acquisitions of inventory, supplies, material and equipment, purchases of contract rights or licenses or leases of intellectual property, in each case, in the ordinary course of business; and

(q) other Investments in any Person having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (q) since the Effective Date, do not exceed $60,000,000.

With respect to any Permitted Investment, at the time such Permitted Investment is made, the Borrower will be entitled to divide and classify such Investment in more than one of the clauses of the definition of "Permitted Investment."

"Permitted Investors" means (a) the ESAS Parties, (b) Fairfax, (c) any holder of Senior Secured Notes or Lender under this Agreement and (d) any person (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) with respect to which Persons described in clauses (a), (b) and (c) of this definition own the majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower that is owned by such group.

"Permitted Liens" means, with respect to any Person:

(a) Senior Priority Liens securing Senior Priority Lien Debt (i) under Credit Facilities Incurred under Section 6.01(b)(1) and Senior Priority Liens securing Cash Management Obligations constituting Senior Priority Lien Obligations, in each case to the extent subject to the Intercreditor Agreement and in an aggregate amount at any time outstanding (when added to the amount of all other outstanding Senior Priority Lien Obligations) not exceeding the Senior Priority Lien Cap and (ii) under Hedging Obligations to the extent that the Majority Lenders have provided their prior written consent to the Borrower's program pursuant to which such Hedging Obligations were incurred and subject to any limitations (including in amount) contained therein;

(b) (x) Liens securing the Senior Secured Notes and any PIK Notes in respect thereof and the Guarantees thereof and (y) to the extent subject to the Intercreditor Agreement, Priority Liens securing other Priority Lien Debt Incurred under Section 6.01(b)(2);

(c) (x) Junior Priority Liens securing the Loans and other Obligations to the extent subject to the Intercreditor Agreement and Junior Priority Liens securing other Junior Priority Lien Debt Incurred under Section 6.01(b)(3)(x) and (y) Junior Liens securing the Junior Lien Credit Agreement and to the extent subject to the Intercreditor Agreement and the Collateral Trust Agreement, Junior Liens securing other Junior Lien Debt Incurred, in each case, under Section 6.01(b)(3)(y) or (z);

(d) pledges or deposits by such Person under workers' compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such

Person or deposits of cash or United States government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case incurred in the ordinary course of business;

(e) Liens imposed by law, such as carriers', warehousemen's and mechanics' Liens, in each case for sums not yet due or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review and Liens arising solely by virtue of any statutory or common law provision relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution; provided, however, that (1) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by the Borrower in excess of those set forth by regulations promulgated by the Federal Reserve Board and (2) such deposit account is not intended by the Borrower or any Restricted Subsidiary to provide collateral to the depository institution;

(f) Liens for taxes not yet subject to penalties for non-payment or which are being contested in good faith by appropriate proceedings;

(g) Liens in favor of issuers of performance, bid or surety bonds, completion guarantees or letters of credit issued pursuant to the request of and for the account of such Person in the ordinary course of its business; provided, however, that such performance, bid or surety bonds, completion guarantees or letters of credit do not constitute, or secure, any Indebtedness in an aggregate amount in excess of $12,000,000 (in addition to and not in limitation of any letters of credit which may be issued pursuant to Credit Facilities permitted under clause (a) above);

(h) survey exceptions, encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not Incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(i) Liens securing Indebtedness Incurred to finance the construction, purchase or lease of, or repairs, improvements or additions to, property, plant or equipment of such Person; provided, however, that the Lien may not extend to any other property owned by such Person or of any other property of the Borrower or any of its Restricted Subsidiaries (whether at the time the Lien is Incurred or otherwise) (other than assets and property affixed or appurtenant thereto), and the Indebtedness (other than any interest thereon) secured by the Lien may not be Incurred more than one-hundred eighty (180) days after the later of the acquisition, completion of construction, repair, improvement, addition or commencement of full operation of the property subject to the Lien; provided, further, that after giving effect to the Incurrence of the Indebtedness secured by such Lien, the Collateral Coverage Ratio is equal to or greater than 1.5 to 1.0;

(j) Liens securing Non-Recourse Purchase Money Indebtedness granted in connection with the acquisition by the Borrower or any Restricted Subsidiary in the ordinary course of business of fixed assets used in the Oil and Gas Business (including the office buildings and other real property used by the Borrower or such Restricted Subsidiary in conducting its operations); provided that (1) such Liens attach only to the fixed assets acquired with the proceeds of such Non-Recourse Purchase Money Indebtedness and (2) such Non-Recourse Purchase Money Indebtedness is not in excess of the purchase price of such fixed assets; provided, further, that after giving effect to the Incurrence of the Indebtedness or other obligations secured by such Lien, the Collateral Coverage Ratio is equal to or greater than 1.5 to 1.0;

(k) Liens existing on the Effective Date and set forth on Schedule 6.07 other than as described under clause (a), (b) and (c) of this definition;

(l) Liens on property or shares of Capital Stock of another Person at the time such other Person becomes a Subsidiary of such Person (and not incurred in anticipation of or in connection with such transaction); provided, however, that the Liens may not extend to any other property owned by such Person or any of its Restricted Subsidiaries (other than assets and property affixed or appurtenant thereto); provided, further, that at the time such Person becomes a Subsidiary, the Collateral Coverage Ratio is equal to or greater than 1.5 to 1.0;

(m) Liens on property at the time such Person or any of its Subsidiaries acquires the property, including any acquisition by means of a merger or consolidation with or into such Person or a Subsidiary of such Person (and not Incurred in anticipation of or in connection with such transaction); provided, however, that the Liens may not extend to any other property owned by such Person or any other property of the Borrower or any of its Restricted Subsidiaries (other than assets and property affixed or appurtenant thereto; provided, further, that at the time of such acquisition, the Collateral Coverage Ratio is equal to or greater than 1.5 to 1.0;

(n) (x) Liens securing Indebtedness or other obligations of the Borrower or any Guarantor owing to the Borrower or any Guarantor (provided that such Liens and Indebtedness and other obligations are subject to a subordinated intercompany note, in form and substance reasonably satisfactory to the Administrative Agent), (y) Liens on the property of any Subsidiary of the Borrower securing Indebtedness or other obligations of any Subsidiary of the Borrower owing to the Borrower or any Guarantor of the Borrower (provided that such Liens and Indebtedness and other obligations are subject to a subordinated intercompany note, in form and substance reasonably satisfactory to the Administrative Agent) and (z) Liens on the property of any Subsidiary of the Borrower that is not a Guarantor securing Indebtedness or other obligations of any Subsidiary of the Borrower that is not a Guarantor owing to the Borrower or any Subsidiary of the Borrower;

(o) Liens on, or related to, assets to secure all or part of the costs (not constituting Indebtedness for borrowed money) incurred in the ordinary course of a Related Business for the surveying, exploration, drilling, extraction, development, operation, production, construction, alteration, repair, improvement, processing, transportation, marketing, storage or operation thereof;

(p) Liens on pipeline or pipeline facilities that arise under operation of law;

(q) Liens arising in the ordinary course of business under operating agreements, joint venture agreements, partnership agreements, oil, natural gas, other hydrocarbon and mineral leases, Farm-Out Agreements or Farm-In Agreements, division orders, contracts for the sale, transportation or exchange of oil or natural gas, unitization and pooling declarations and agreements, area of mutual interest agreements, overriding royalty agreements, net profits agreements, production payment agreements, royalty trust agreements, incentive compensation programs on terms that are reasonably customary in the Oil and Gas Business for geologists, geophysicists and other providers of technical services to the Borrower or a Restricted Subsidiary, master limited partnership agreements, development agreements, operating agreements, production sales contracts, gas balancing or deferred production agreements, injection, re-pressuring and recycling agreements, salt water or other disposal agreements, seismic or geophysical permits or agreements, and other agreements that are customary in the Oil and Gas Business provided, however, that in all instances such Liens are limited to the assets that are the subject of the relevant agreement, program, order or contract; provided, further, that such Liens do not secure any Indebtedness for borrowed money (other than an aggregate principal amount not in excess of $6,000,000 at any time outstanding);

(r) Liens reserved in oil, natural gas, other hydrocarbon and mineral leases for bonus or rental payments and for compliance with the terms of such leases;

(s) Liens to secure any Refinancing (or successive Refinancings) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clause (i), (k), (l) or (m); provided, however, that (1) such new Lien shall be limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus improvements and accessions to such property or proceeds or distributions thereof) and (2) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clause (i), (k), (l) or (m) above at the time the original Lien became a Permitted Lien and (B) an amount necessary to pay any fees and expenses, including premiums, related to such Refinancing.

(t) judgment liens in respect of judgments that do not constitute an Event of Default under clause (j) of Article VIII (but excluding judgments in respect of debt for borrowed money);

(u) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Borrower and its Restricted Subsidiaries in the ordinary course of business;

(v) Liens on the Marcellus JV Oil and Gas Assets securing the obligations of the Borrower and certain Restricted Subsidiaries under the Marcellus JV Documents and Liens securing the obligations of the Borrower and certain Restricted Subsidiaries under the BG JV Documents;

(w) leases, licenses, subleases and sublicenses of real property and intellectual property rights that do not materially interfere with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries, taken as whole; and

(x) preferential rights to purchase, and provisions requiring a third party's consent prior to assignment and similar restraints on alienation, in each case, granted pursuant to an oil and gas operating agreement and arising in the ordinary course of business or incident to the exploration, development, operation and maintenance of Oil and Gas Properties; provided such right, requirement or restraint does not materially affect the value of such Oil and Gas Properties;

provided that in each case set forth above, notwithstanding any stated limitation on the assets that may be subject to such Lien, a Permitted Lien on a specified asset or group or type of assets may include Liens on all improvements, additions and accessions thereto and all products and proceeds thereof; provided, further, that for purposes of this definition, the term "Indebtedness" shall be deemed to include interest on such Indebtedness.

"Permitted Marketing Obligations" means Indebtedness of the Borrower or any Restricted Subsidiary under letter of credit or borrowed money obligations or, in lieu of or in addition to such letters of credit or borrowed money, Guarantees of such Indebtedness or other obligations of the Borrower or any Restricted Subsidiary by any other Restricted Subsidiary, in each case, related to the purchase by the Borrower or any Restricted Subsidiary of Hydrocarbons for which the Borrower or such Restricted Subsidiary has contracts to sell; provided, however, that in the event that such Indebtedness or obligations are guaranteed by the Borrower or any Restricted Subsidiary, then either: (a) the Person with which the Borrower or such Restricted Subsidiary has contracts to sell has an Investment Grade Rating or, in lieu thereof, a Person guaranteeing the payment of such obligated Person has an Investment Grade Rating or (b) such Person posts, or has posted for it, a letter of credit (issued by a Person that has an Investment Grade Rating and is not an Affiliate of the Borrower) in favor of the Borrower or such Restricted Subsidiary with respect to all such Person's obligations to the Borrower or such Restricted Subsidiary under such contracts.

"Permitted Prior Liens" means Liens incurred pursuant to clauses (d), (e), (f), (g), (h), (j), (p) and (q) of the definition of "Permitted Liens".

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"PIK Interest" has the meaning assigned to such term in Section 2.10(b) of this Agreement.

"PIK Notes" means any additional Senior Secured Notes issued from time to time in respect of any PIK interest payment in accordance with the indenture governing the Senior Secured Notes.

"PIK Shares" means Common Stock issued as provided in Section 2.10 of this Agreement.

"Plan" means 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 any Credit Party 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" means a Pledge and Security Agreement in favor of the Collateral Trustee for the benefit of the Secured Parties and the other holders of Junior Priority Lien Obligations covering, among other things, the rights and interests of Borrower or any Restricted Subsidiary in the Equity Interest of each Restricted Subsidiary and of each Affiliate that is an operator of any Oil and Gas Properties (other than the Equity Interests of the Borrower) and otherwise in form and substance satisfactory to the Administrative Agent.

"Preferred Stock," as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

"Priority Lien" means a Lien junior in priority to the Senior Priority Liens and senior in priority to the Junior Priority Liens and Junior Liens granted by the Borrower or any Guarantor in favor of the Priority Lien Collateral Trustee pursuant to a Priority Lien Security Document, at any time, upon any Property of the Borrower or any Guarantor to secure Priority Lien Obligations (including Liens on such Collateral under the security documents associated with any Replacement Credit Facility).

"Priority Lien Collateral Trustee" means the collateral trustee for all holders of the Priority Lien Obligations under the Priority Lien Collateral Trust Agreement. Wilmington Trust, National Association will initially serve as the Priority Lien Collateral Trustee.

"Priority Lien Collateral Trust Agreement" means that certain Collateral Trust Agreement, dated as of the Effective Date, among the Borrower, the Guarantors party thereto, the Priority Lien Collateral Trustee and the Senior Secured Notes Trustee, as representative for the Senior Secured Notes, as the same may be amended, restated, amended and restated, supplemented, replaced (whether upon or after termination or otherwise) or otherwise modified or restated in accordance with the terms thereof.

"Priority Lien Debt" means (a) the Senior Secured Notes and other Obligations; and (b) any other Indebtedness (other than intercompany Indebtedness owing to the Borrower or its Subsidiaries) of the Borrower or any Guarantor permitted to be Incurred under Section 6.01(b)(2) (including Refinancing Indebtedness with respect to Priority Lien Debt with other Priority Lien Debt to the extent contemplated and permitted by the Intercreditor Agreement and the Priority Lien Collateral Trust Agreement) that is secured equally and ratably with the Obligations by a Priority Lien and that is permitted to be Incurred and so secured under each applicable Secured Debt Document; provided that, in the case of any Indebtedness referred to in clause (b) of this definition:

(1) (i) such Indebtedness does not mature and does not have any mandatory or scheduled payments or sinking fund obligations on or prior to ninety-one (91) days after the Stated Maturity of the Senior Secured Notes (except as a result of a customary change of control or asset sale repurchase offer provisions) and (ii) the principal amount of such Indebtedness does not exceed the principal amount of, plus any accrued and unpaid interest on, the Priority Lien Obligations being refinanced or exchanged;

(2) on or before the date on which such Indebtedness is Incurred by the Borrower or any Guarantor, such Indebtedness is designated by the Borrower in an Officers' Certificate delivered to each Priority Lien Representative and the Collateral Trustee, as "Priority Lien Debt," and such Officers' Certificate also certifies that such Indebtedness is permitted and with respect to any other requirements set forth in the Intercreditor Agreement;

(3) a Priority Lien Representative is designated with respect to such Indebtedness and executes and delivers an Additional Secured Debt Designation on behalf of itself and all holders of such Indebtedness;

(4) all relevant filings and recordations necessary to ensure that such Indebtedness is secured by the Collateral in accordance with the applicable Priority Lien Security Documents are authorized, executed (if applicable) and recorded in each appropriate jurisdiction (provided that this clause (4) may be satisfied on a post-closing basis if permitted by the Priority Lien Representative with respect to such Indebtedness); and

(5) requirements set forth in the Collateral Trust Agreement as to the confirmation, grant or perfection of the Collateral Trustee's Liens to secure such Indebtedness or Obligations in respect thereof are satisfied (and the satisfaction of such requirements and the other provisions of this clause (5) will be conclusively established if the Borrower delivers to the Collateral Trustee an Officers' Certificate stating that such requirements and other provisions have been satisfied and that such Indebtedness is "Priority Lien Debt");

provided that all such Indebtedness (other than any DIP Financing that is permitted by the Intercreditor Agreement) shall be pari passu in right of payment, it being understood that there may be different tranches of Priority Lien Debt with different maturities and amortization profiles, but the principal amount of Indebtedness under all such tranches must in all other respects be pari passu in right of payment. Any such Indebtedness (other than any such DIP Financing) that is not consistent with the foregoing condition for pari passu treatment in right of payment with the Senior Secured Notes under the Priority Lien Documents shall not constitute Priority Lien Debt.

"Priority Lien Documents" means, collectively, the Senior Secured Note Documents and any additional indenture, supplemental indenture, credit agreement or other agreement governing each other Series of Priority Lien Debt and the Priority Lien Security Documents (other than any Priority Lien Security Documents that do not secure Priority Lien Obligations).

"Priority Lien Obligations" means Priority Lien Debt and all other principal (including reimbursement obligations), interest (including, to the extent legally permitted, all interest accrued thereon after the commencement of any insolvency or liquidation proceeding at the rate, including any applicable post-default rate even if such interest is not enforceable, allowable or allowed as a claim in such proceeding), premium (if any), fees, indemnifications, reimbursements, expenses, and other liabilities in respect thereof.

"Priority Lien Representative" means (a) in the case of the Senior Secured Notes, the Senior Secured Notes Trustee and (b) in the case of any other Series of Priority Lien Debt, the trustee, agent or representative of the holders of such Series of Priority Lien Debt who (1) is appointed as a Priority Lien Representative (for purposes related to the administration of the Priority Lien Security Documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Priority Lien Debt, together with its successors in such capacity, and (2) has become a party to the Priority Lien Collateral Trust Agreement by executing a Collateral Trust Joinder Agreement.

"Priority Lien Security Documents" means the Intercreditor Agreement, the Pledge Agreement (as defined in the Senior Secured Notes Indenture), the Security Agreement (as defined in the Senior Secured Notes Indenture) and all security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements or other grants or transfers for security executed and delivered by the Borrower or any Guarantor creating (or purporting to create) a Priority Lien upon Collateral (as defined in the Senior Secured Notes Indenture) in favor of the Priority Lien Collateral Trustee, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms.

"Production Payments" means Dollar-Denominated Production Payments and Volumetric Production Payments, collectively.

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

"Proved Reserves" means those Oil and Gas Properties designated as proved (in accordance with SEC rules and regulations) in the Reserve Report most recently delivered to Administrative Agent pursuant to Section 5.01.

"PV-10" means, as of any date of determination, the present value of future cash flows from the Proved Reserves and Unproved Reserves included in the Oil and Gas Properties,

as set forth in the most recent Collateral Coverage Reserve Report delivered pursuant to Section 5.11 or a more a recent Collateral Coverage Reserve Report, utilizing a 10% discount rate and using NYMEX Prices.

"Rating Agency" means each of S&P and Moody's or if S&P or Moody's or both shall not make a rating on the applicable obligations publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Borrower (as certified by a resolution of the Governing Body of the Borrower) which shall be substituted for S&P or Moody's or both, as the case may be.

"Recipient" means, as applicable, the Administrative Agent and any Lender.

"Record Date" for the interest, if any, payable on any applicable Interest Payment Date means February 20, May 20, August 20 and November 20 (whether or not a Business Day) next preceding such Interest Payment Date.

"Refinance" means, in respect of any Indebtedness, to refinance, extend, renew, refund, replace, repay, prepay, purchase, redeem, defease or retire, or to issue other Indebtedness in exchange or replacement for, such Indebtedness. "Refinanced" and "Refinancing" shall have correlative meanings.

"Refinancing Indebtedness" means (a) Indebtedness incurred by the Borrower or any Restricted Subsidiary, (b) Disqualified Stock issued by the Borrower or any Restricted Subsidiary or (c) Preferred Stock issued by any Restricted Subsidiary, which, in each case, serves to extend, replace, refund, refinance, renew or defease any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, including Refinancing Indebtedness, so long as:

(1) the principal amount (or accreted value, if applicable) of such new Indebtedness, the amount of such new Preferred Stock or the liquidation preference of such new Disqualified Stock does not exceed (i) the principal amount of (or accreted value, if applicable), plus any accrued and unpaid PIK or cash interest on, the Indebtedness, the amount of, plus any accrued and unpaid dividends on, the Preferred Stock, or the liquidation preference of, plus any accrued and unpaid dividends on, the Disqualified Stock, as the case may be, being so extended, replaced, refunded, refinanced, renewed or defeased (such Indebtedness or Disqualified Stock or Preferred Stock, the "Applicable Refinanced Debt"), plus (ii) an amount equal to the sum of (A) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Applicable Refinanced Debt and (B) any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such Applicable Refinanced Debt;

(2) such Refinancing Indebtedness has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being extended, replaced, refunded, refinanced, renewed or defeased;

(3) such Refinancing Indebtedness has a final scheduled maturity date equal to or later than the earlier of (A) the final scheduled maturity date of the Indebtedness, Preferred Stock or Disqualified Stock being so extended, replaced, refunded, refinanced, renewed or defeased and (B) the date that is ninety-one (91) days after the latest Stated Maturity date of the Loans;

(4) to the extent such Refinancing Indebtedness extends, replaces, refunds, refinances, renews or defeases (a) Subordinated Indebtedness, such Refinancing Indebtedness is subordinated to the obligations at least to the same extent as the Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, (b) the Existing Unsecured Notes, such Refinancing Indebtedness shall, if secured, constitute Junior Priority Lien Debt or Junior Lien Debt (subject, in each case to the Intercreditor Agreement) or, if initially unsecured, shall be unsecured at all times and, in each case, no Subsidiary of the Borrower (other than a Guarantor) shall, directly or indirectly, be an obligor (whether a borrower or otherwise), guarantor or surety under, or for, such Refinancing Indebtedness and shall not provide any Guarantee of any such Refinancing Indebtedness or (c) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively; and

(5) to the extent such Refinancing Indebtedness extends, replaces, refunds, refinances, renews or defeases the Existing Unsecured Notes, Senior Priority Lien Debt, Priority Lien Debt, Junior Priority Lien Debt or Junior Lien Debt, the covenants (affirmative and negative), default and event of default provisions, interest rate (including interest rate floor and default rate), repayment, prepayment, repurchase and/or sinking fund provisions, reporting provisions, and other material provisions of such Refinancing Indebtedness shall be no more favorable to the creditors thereunder, or more burdensome to the debtors or guarantors thereunder, than the correlative and/or corresponding provisions under the Loan Documents (provided, further, that, in all events, for the avoidance of doubt, such Refinancing Indebtedness shall not contain any financial maintenance covenants not otherwise contained in the Indebtedness being refinanced);

Notwithstanding the foregoing, Refinancing Indebtedness shall not include:

(1) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refinances Indebtedness or Disqualified Stock of the Borrower;

(2) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(3) Indebtedness or Disqualified Stock of the Borrower or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary.

In addition, with respect to any Refinancing Indebtedness of Refinancing Indebtedness, all limitations, restrictions, qualifying criteria and other standards set forth in this definition shall equally apply.

"Register" has the meaning assigned to such term in Section 10.04.

"Registration Rights Agreement" means the registration rights agreement, dated as of the Effective Date, among the Borrower and the holders of the Borrower's Common Stock.

"Related Business" means any Oil and Gas Business and any other business in which the Borrower or any of the Restricted Subsidiaries was engaged on the Effective Date and any business related, ancillary or complementary to such business.

"Related Fund" means, with respect to any Lender that is a fund or commingled investment vehicle that invests in bank loans, any other fund that invests in bank loans and is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Replacement Credit Facility" means any Credit Facility that refunds, refinances or replaces the RBL Credit Agreement or any other Replacement Credit Facility, in each case, in whole and with all commitments thereunder terminated.

"Requisite Shareholder Approvals" means the Borrower's receipt of the requisite votes or consents of the holders of its shares of Common Stock, (1) to the issuances of Common Stock represented by the Warrants, the PIK Note Payments (as defined in the Senior Secured Notes Indenture), the issuance of PIK Shares under the Senior Secured Notes Indenture and the PIK Shares issued pursuant to the Loan Documents for purposes of the rules of the New York Stock Exchange to the extent the Common Stock remains listed on the New York Stock Exchange and such approval is required for the issuances of the Warrants, the PIK Note Payments (as defined in the Senior Secured Notes Indenture), the issuance of PIK Shares under the Senior Secured Notes Indenture and the PIK Shares issued pursuant to the Loan Documents and (2) with respect to the amendment of the Borrower's existing charter to (a) increase its authorized Common Stock or (b) effect a reverse stock split, in each case under applicable Texas law (the "Charter Amendment Approval"); provided, that the Borrower may waive, in its sole discretion, the Charter Amendment Approval.

"Resale Registration Statement" mean a registration statement filed with the SEC pursuant to Rule 415 under the Securities Act on Form S-3 under the Securities Act (or in the event that the Borrower is ineligible to use such form, such other form as the Issuer is eligible to use under the Securities Act provided that such other form shall be converted into a Form S-3 promptly after Form S-3 becomes available to the Borrower) covering resales by the Lenders as selling shareholders (not underwriters) of any PIK Shares received as payment of interest on the Loans.

"Reserve Report" means a report setting forth, as of the end of the Borrower's most recent fiscal year, the Proved Reserves attributable to the Oil and Gas Properties of the Borrower and the Restricted Subsidiaries, together with a projection of the rate of production and future net income taxes, operating expenses and capital expenditures with respect thereto as of such date, based upon the pricing assumptions consistent with SEC reporting requirements at the time.

"Responsible Officer" means the chief executive officer, president, vice president, chief financial officer, principal accounting officer, treasurer or assistant treasurer of a Credit Party. Any document delivered hereunder that is signed by a Responsible Officer of a Credit Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Credit Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Credit Party.

"Restricted Payment" means:

(a) the declaration or payment of any dividends or any other distributions of any sort in respect of the Borrower's or any Restricted Subsidiary's Equity Interests (including any payment in connection with any merger or consolidation involving such Person) or similar payment to the direct or indirect holders of the Borrower's or any Restricted Subsidiary's Equity Interests (other than (1) dividends made or distributions payable solely in the Borrower's Equity Interests (other than Disqualified Stock), (2) dividends made or distributions payable solely to the Borrower or (to the extent made to all equity-holders on a pro rata basis) a Restricted Subsidiary and (3) pro rata dividends or other distributions made by a Restricted Subsidiary of the Borrower to the holders of its common Equity Interests on a pro rata basis);

(b) the purchase, redemption or other acquisition or retirement for value of any Equity Interest of (1) the Borrower or (2) a Restricted Subsidiary held by any Affiliate of the Borrower (other than by a Restricted Subsidiary), including in connection with any merger or consolidation and including the exercise of any option to exchange any Equity Interest (other than into Equity Interests of the Borrower that are not Disqualified Stock);

(c) the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment of any Subordinated Indebtedness of the Borrower or any Guarantor or any Existing Unsecured Notes, Junior Priority Lien Debt (other than the Obligations), Junior Lien Debt or Senior Debt (other than, except with respect to the Existing Unsecured Notes, (1) from the Borrower or a Guarantor or (2) in anticipation of satisfying a sinking fund obligation, principal installment or payment due at final maturity, in each case due within one year of the date of such purchase, repurchase, redemption, defeasance or other acquisition); or

(d) the making of any Investment (other than a Permitted Investment) in any Person.

"Restricted Subsidiary" means any Subsidiary of the Borrower that is not an Unrestricted Subsidiary.

"Right of First Refusal" means the bona fide right, but not the obligation, of the Backstop Commitment Parties, or their permitted transferees or assignees, to acquire, by way of assignment, on a ratable basis in accordance with the applicable Backstop Commitment Party's ROFR Applicable Percentage and in accordance with Section 10.04(f) of this Agreement, all or a portion of the rights and obligations of any Lender under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) that are to be assigned by any such Lender pursuant to the terms of this Agreement, on the same terms and subject to the same conditions offered by such Lender to the applicable Eligible Assignee(s) prior to the consummation of such assignment to such Eligible Assignee(s).

"ROFR Applicable Percentage" means, with respect to Hamblin Watsa Investment Counsel Ltd. and its Affiliates (including Fairfax Financial Holdings Limited), 50.33%, with respect to ESAS, 23.33%, with respect to Oaktree Capital Management, 13.17% and with respect to Gen IV, 13.17%; provided that between and among all or any of the Backstop Commitment Parties, from time to time, such Backstop Commitment Parties may agree to transfer (as between any two Backstop Commitment Parties, whether permanently or temporarily), reduce (unilaterally by any individual Backstop Commitment Parties, whether permanently or temporarily) or otherwise modify their ROFR Applicable Percentages (as agreed between all Backstop Commitment Parties).

"ROFR Notice" means written notice from a Backstop Commitment Party notifying the Administrative Agent that such Backstop Commitment Party intends to exercise its Right of First Refusal as to a proposed assignment of Loans under this Agreement.

"S&P" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

"Sale/Leaseback Transaction" means an arrangement relating to Property owned by the Borrower or a Restricted Subsidiary on the Effective Date or thereafter acquired by the Borrower or a Restricted Subsidiary whereby the Borrower or a Restricted Subsidiary transfers such property to a Person and the Borrower or a Restricted Subsidiary leases it from such Person.

"SEC" means the U.S. Securities and Exchange Commission or any successor thereto.

"Secured Debt Documents" means the Senior Priority Lien Documents, the Priority Lien Documents, the Junior Priority Lien Documents and the Junior Lien Documents.

"Secured Indebtedness" means, as of any date, any Indebtedness for borrowed money secured as (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured as) Senior Priority Lien Debt, Priority Lien Debt, Junior Priority Lien Debt, Junior Lien Debt (or any Replacement Credit Facility) or any other Indebtedness for borrowed money which is secured by a Lien which is not expressly subordinated to the Obligations and the obligations in respect of the Senior Priority Lien Debt and in respect of the Priority Lien Debt.

"Secured Party" means the Administrative Agent, Collateral Trustee, any Lender and any other holder of Obligations.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Security Agreement" means a Security Agreement in favor of the Collateral Trustee for the benefit of the Secured Parties and the other holders of Junior Priority Lien Obligations covering, among other things, the rights and interests of Borrower or any Restricted Subsidiary in the property of such Restricted Subsidiary and in form and substance satisfactory to the Administrative Agent.

"Security Instruments" means collectively, the Collateral Trust Agreement, all Collateral Trust Joinder Agreements, the Pledge Agreement, the Security Agreement, the Deposit Account Control Agreements, all Guarantees of the Obligations evidenced by the Loan Documents and all mortgages, security agreements, pledge agreements, collateral assignments and other collateral documents covering the Oil and Gas Properties of the Borrower and the Restricted Subsidiaries and the Equity Interests of the Restricted Subsidiaries and other personal property, equipment, oil and gas inventory and proceeds of the foregoing, all such documents to be in form and substance reasonably satisfactory to the Administrative Agent and Collateral Trustee.

"Senior Debt" means unsecured Indebtedness of the Borrower or any of its Restricted Subsidiaries permitted to be Incurred under the terms of this Agreement, unless the instrument under which such Indebtedness is Incurred expressly provides that it is subordinated in right of payment to the Loans and all Obligations with respect to the foregoing. Notwithstanding anything to the contrary in the preceding sentence, Senior Debt will not include:

(a) any intercompany Indebtedness between or among the Borrower or any of its Subsidiaries or any of its Affiliates; or

(b) any trade payables or taxes owed or owing by the Borrower or any of its Subsidiaries.

"Senior Priority Lien" means a Lien granted by the Borrower or any Guarantor in favor of the Senior Priority Lien Collateral Agent at any time, upon any Property of the Borrower or any Guarantor to secure Senior Priority Lien Obligations (including Liens on such Collateral under the security documents associated with any Replacement Credit Facility).

"Senior Priority Lien Cap" means, $200,000,000.

"Senior Priority Lien Collateral Agent" means the First Lien RBL Agent (or other Person designated by the First Lien RBL Agent), or if the First Lien RBL Credit Agreement ceases to exist, the collateral agent or other representative of lenders or holders of Senior Priority Lien Obligations designated pursuant to the terms of the Senior Priority Lien Documents and the Intercreditor Agreement.

"Senior Priority Lien Debt" means (1) Indebtedness of the Borrower and the Guarantors under the First Lien RBL Credit Agreement (including letters of credit (with outstanding letters of credit being deemed to have a principal amount equal to the stated amount thereof) and reimbursement obligations with respect thereto) or any Replacement Credit Facility, in each case, that is subject to the Intercreditor Agreement and permitted to be Incurred under Section 6.01(b)(1) and secured under each applicable Secured Debt Document; provided, in the case of Indebtedness under any Replacement Credit Facility, that:

(a) on or before the date on which such Indebtedness is Incurred under such Replacement Credit Facility, such Indebtedness is designated by the Borrower, in an Officers' Certificate delivered to the Senior Priority Lien Collateral Agent and the Collateral Trustee, as "Senior Priority Lien Debt" for the purposes of the Secured Debt Documents; provided that if such Indebtedness is designated as "Senior Priority Lien Debt," it cannot also be designated as Priority Lien Debt, Junior Priority Lien Debt or Junior Lien Debt (or any combination of the three);

(b) the collateral agent or other representative with respect to such Indebtedness, the Senior Priority Lien Collateral Agent, the Collateral Trustee, the Borrower and each applicable Guarantor have duly executed and delivered the Intercreditor Agreement (or a joinder to the Intercreditor Agreement or a new Intercreditor Agreement substantially similar to the Intercreditor Agreement as in effect on the Effective Date and in a form reasonably acceptable to each of the parties thereto);

(c) the aggregate outstanding amount of the Senior Priority Lien Obligations, after giving effect to such Replacement Credit Facility, shall not exceed the Senior Priority Lien Cap; and

(d) all other requirements set forth in the Intercreditor Agreement as to the confirmation, grant or perfection of the Senior Priority Lien Collateral Agent's Liens to secure such Indebtedness or obligations in respect thereof are satisfied;

(2) Cash Management Obligations permitted to be secured by Senior Priority Liens pursuant to clause (a) of the definition of "Permitted Liens;" and

(3) Hedging Obligations of the Borrower or any Guarantor to the extent that the Administrative Agent has provided its prior written consent to the Borrower's program pursuant to which such Hedging Obligations were incurred and subject to any limitations (including in amount) contained therein.

For purposes of this definition, all letters of credit will be valued at the face amount thereof, whether or not drawn.

"Senior Priority Lien Documents" means the First Lien RBL Documents, the Replacement Credit Facility and all other loan documents, notes, guarantees, instruments and agreements governing or evidencing, or executed or delivered in connection with, any Replacement Credit Facility.

"Senior Priority Lien Obligations" means (a) the "Obligations" as defined in the First Lien RBL Credit Agreement and (b) all other Senior Priority Lien Debt and principal (including reimbursement obligations and obligations to provide cash collateral with respect to letters of credit whether or not drawn), interest (including, to the extent legally permitted, all interest accrued thereon after the commencement of any insolvency or liquidation proceeding at the rate, including any applicable post-default rate even if such interest is not enforceable, allowable or allowed as a claim in such proceeding), premium (if any), fees, indemnifications, reimbursements, expenses, and other liabilities in respect thereof, including any make-whole payments, together with any Hedging Obligations and Cash Management Obligations, in each case, to the extent that such obligations are secured by Senior Priority Liens. For the avoidance of doubt, Hedging Obligations shall only constitute Senior Priority Lien Obligations to the extent that such Hedging Obligations are secured under the terms of the First Lien RBL Credit Agreement and the security documents creating Senior Priority Liens. Notwithstanding any other provision hereof, the term "Senior Priority Lien Obligations" will include accrued interest, fees, and costs incurred under any Senior Priority Lien Document, whether incurred before or after commencement of an insolvency or liquidation proceeding, and whether or not allowable in an insolvency or liquidation proceeding. To the extent that any payment with respect to the Senior Priority Lien Obligations (whether by or on behalf of any Guarantor, as proceeds of security, enforcement of any right of set-off, or otherwise) is declared to be fraudulent or preferential in any respect, set aside, or required to be paid to a debtor in possession, trustee, receiver, or similar Person, then the obligation or part thereof originally intended to be satisfied will be deemed to be reinstated and outstanding as if such payment had not occurred.

"Senior Priority Lien Representative" means (a) the First Lien RBL Agent or (b) in the case of any Replacement Credit Facility, the trustee, agent or representative of the holders of such Senior Priority Lien Debt who maintains the transfer register for such Senior Priority Lien Debt and is appointed as a representative of the Senior Priority Lien Debt (for purposes related to the administration of the security documents related to such Senior Priority Lien Debt) pursuant to the credit agreement or other agreement governing such Senior Priority Lien Debt.

"Senior Secured Notes" means the Borrower's $300 million aggregate principal amount of its 8.0% / 11.0% 1.5 Lien Senior Secured PIK Toggle Notes due 2022 issued pursuant to the Senior Secured Notes Indenture on the Effective Date and any PIK Notes.

"Senior Secured Notes Documents" means the Senior Secured Notes, the Senior Secured Notes Indenture and all other instruments, agreements and other documents evidencing or governing the Senior Secured Notes or providing for any guarantee or other right in respect thereof.

"Senior Secured Notes Indenture" means that certain Indenture dated as of March 15, 2017 among Exco Resources, Inc., as the Issuer, certain subsidiaries of Exco Resources, Inc., as guarantors, the Senior Secured Notes Trustee and the Priority Lien Collateral Trustee, as the same may be amended, supplemented, modified, restated, refinanced or replaced on or prior to the Effective Date and as may be amended, supplemented, modified, restated, refinanced or replaced from time to time after the Effective Date in accordance with the Intercreditor Agreement and with the same and/or different noteholders and/or trustees in accordance with the Intercreditor Agreement.

"Senior Secured Notes Trustee" means Wilmington Trust, National Association in its capacity as Trustee (under and as defined in the Senior Secured Notes Indenture), and any of its assignees or successors permitted in accordance with the Intercreditor Agreement.

"Series of Junior Lien Debt" means, severally, each issue or series of Junior Lien Debt for which a single transfer register is maintained.

"Series of Junior Priority Lien Debt" means, severally, each issue or series of Junior Priority Lien Debt for which a single transfer register is maintained.

"Series of Priority Lien Debt" means, severally, the Senior Secured Notes, the Guarantees of the Senior Secured Notes and each other issue or series of Priority Lien Debt for which a single transfer register is maintained.

"Series of Secured Debt" means the Senior Priority Lien Debt, each Series of Priority Lien Debt, each series of Junior Priority Lien Debt and each Series of Junior Lien Debt.

"Significant Subsidiary" means any Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the Effective Date.

"Solvent" and "Solvency" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable 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 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 such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Stated Maturity" means, with respect to any security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency unless such contingency has occurred).

"Subordinated Indebtedness" means (a) with respect to the Borrower, any Indebtedness of the Borrower which is by its terms subordinated in right of payment to the Loans and the other Obligations and (b) with respect to any Guarantor, any Indebtedness of such Guarantor which is by its terms subordinated in right of payment to such Guarantor's guarantee of the Loans and other Obligations under the Loan Documents.

"Subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, 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, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held, or (b) 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 the context otherwise clearly requires, references herein to a "Subsidiary" refer to a Subsidiary of the Borrower.

"Super-Majority Lenders" means, at any time, Lenders having Credit Exposures representing at least eighty percent (80%) of the sum of the Aggregate Credit Exposure at such time. The Credit Exposures of any Defaulting Lender shall be disregarded in determining Super-Majority Lenders at any time.

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that in no event shall any (a) phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of any Credit Party or any Restricted Subsidiary or (b) near term spot market purchase and sale of a commodity in the ordinary course of business based on a price determined by a rate quoted on an organized exchange for actual physical delivery, be a Swap Agreement.

"Swap Modification" means the amendment, modification, cancellation, monetization, sale, transfer, assignment, early termination or other disposition of any Swap Agreement for Crude Oil or Natural Gas.

"Taxes" means any present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Temporary Cash Investments" means any of the following:

(a) any investment in direct obligations of the United States of America or any agency thereof or obligations guaranteed by the United States of America or any agency thereof;

(b) investments in demand and time deposit accounts, certificates of deposit and money market deposits maturing within 270 days after the date of acquisition thereof issued by a bank or trust company which is organized under the laws of the United States of America, any State thereof or any foreign country recognized by the United States of

America, and which bank or trust company has capital, surplus and undivided profits aggregating in excess of $50,000,000 million (or the foreign currency equivalent thereof) and has outstanding debt which is rated "A" (or such similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) or any money-market fund sponsored by a registered broker dealer or mutual fund distributor;

(c) investments in deposits available for withdrawal on demand with any commercial bank that is organized under the laws of any country in which the Borrower or any Restricted Subsidiary maintains an office or is engaged in the Oil and Gas Business; provided, however, that (1) all such deposits have been made in such accounts in the ordinary course of business and (2) such deposits do not at any one time exceed $12,000,000 in the aggregate;

(d) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clause (a) above entered into with a bank meeting the qualifications described in clause (b) above;

(e) investments in commercial paper, maturing not more than ninety (90) days after the date of acquisition, issued by a corporation (other than an Affiliate of the Borrower) organized and in existence under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of "P-1" (or higher) according to Moody's or "A-1" (or higher) according to S&P;

(f) investments in securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least "A" by S&P or "A" by Moody's; and

(g) investments in money market funds that invest 95% or more of their assets in securities of the types described in clauses (a) through (f) above.

"Term Lenders" means, as of any date of determination, Lenders having a Term Loan Commitment or a Term Loan.

"Term Loan Commitment" means (a) as to any Tranche A Term Loan Lender, the commitment of such Tranche A Term Loan Lender to make Tranche A Term Loans in accordance with its Tranche A Term Loan Commitment, and (b) as to all Term Lenders, the aggregate Tranche A Term Loan Commitments, which aggregate commitments on the Effective Date shall be $682,753,719. After advancing an applicable Term Loan, each reference to a Term Lender's Term Loan Commitment shall refer to such Term Lender's Applicable Percentage of such Term Loan.

"Term Loans" means the Tranche A Term Loans extended by the Tranche A Term Loan Lenders to the Borrower pursuant to Section 2.01(a) on the Effective Date.

"Term Loan Maturity Date" means October 26, 2020.

"Trading Day" means a day on which the New York Stock Exchange or other exchange or the over-the-counter-market if the Common Stock is not then listed on the New York Stock Exchange, is open for trading.

"Tranche A Exchange Term Loan" means the Loans and Commitments under the Exchange Term Loan Agreement that are held by Tranche A Exchange Term Loan Lenders and that were exchanged for Term Loans on the Effective Date pursuant to the Exchange Agreement and this Agreement.

"Tranche A Exchange Term Loan Lender" has the meaning assigned to such term in the Recitals.

"Tranche A Fairfax Term Loan" means the Loans and Commitments under the Fairfax Term Loan Agreement that are held by Tranche A Fairfax Term Loan Lenders and that were exchanged for Term Loans on the Effective Date pursuant to the Exchange Agreement and this Agreement.

"Tranche A Fairfax Term Loan Lender" has the meaning assigned to such term in the Recitals.

"Tranche A Term Loan" has the meaning assigned to such term in Section 2.01(a).

"Tranche A Term Loan Commitment" means the several commitments of the Tranche A Term Loan Lenders to make Tranche A Term Loans as set forth in Schedule 2.01 or in the most recent Assignment and Assumption executed by such Tranche A Term Loan Lender, which commitments on the Effective Date shall be $682,753,719 in the aggregate.

"Tranche A Term Loan Lender" means, as of any date of determination, Lenders having a Tranche A Term Loan Commitment or a Tranche A Term Loan.

"Transactions" means (a) the execution, delivery and performance by the Credit Parties of this Agreement and the Loan Documents, (b) the borrowing of Loans, (c) the use of the proceeds thereof, including the cashless settlement of the loans and other obligations outstanding on the Effective Date under the Existing Second Lien Credit Agreements, (e) the grant of Liens by the Credit Parties on the Mortgaged Properties and the other Collateral pursuant to the Security Instruments and (f) the amendment of the First Lien RBL Credit Agreement, the execution of the Senior Secured Notes Documents, the amendment of the Junior Lien Credit Agreement and the settlement of certain amounts outstanding under the Junior Lien Credit Agreement with the proceeds of this Agreement.

"Uniform Commercial Code" means the Uniform Commercial Code of the State of New York or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

"Unproved Reserves" means probable reserves and/or possible reserves as defined in Rule 4-10 of Regulation S-X.

"Unrestricted Cash and Cash Equivalents" means, as of any date of determination, that portion of the Borrower's and its Subsidiaries' aggregate cash and Cash Equivalents that (x) would not appear as "restricted" on a consolidated balance sheet of the Borrower, (y) is maintained with a depositary bank in the United States and is subject to perfected Lien in favor of the Collateral Trustee for the benefit of the Secured Parties and (z) that is not encumbered by or subject to any Lien (including, without limitation, any Lien permitted hereunder, other than (a) Liens securing Junior Priority Lien Debt, Priority Lien Debt and Senior Priority Lien Debt, (b) Liens securing Junior Lien Debt and (c) bankers' liens), setoff (other than ordinary course setoff rights of a depository bank arising under a bank depository agreement for customary fees, charges and other account-related expenses due to such depository bank thereunder), counterclaim, recoupment, defense or other right in favor of any Person.

"Unrestricted Subsidiary" means (a) any Subsidiary that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors of the Borrower in the manner provided below, (b) any Subsidiary of an Unrestricted Subsidiary, (c) EBG Resources and any of its Subsidiaries, (d) Bonchasse Land Company, LLC, a Louisiana limited liability company and any of its Subsidiaries, (e) the Marcellus JV Operator and any of its Subsidiaries (f) the Marcellus Midstream Owner and any of its Subsidiaries, and (g) PCMWL, LLC, Moran Minerals, LLC and Moran Land Company, LLC. The Board of Directors of the Borrower may designate any Subsidiary (including any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries at the time of such designation or at any time thereafter (i) is a Material Domestic Subsidiary or owns, directly or indirectly, a Material Domestic Subsidiary, (ii) owns Oil and Gas Properties or owns, directly or indirectly, a Subsidiary that owns Oil and Gas Properties or (iii) guarantees, or is a primary obligor of, any indebtedness, liabilities or other obligations under any Senior Debt (including the Existing Unsecured Notes), Senior Priority Lien Debt, Priority Lien Debt, Junior Priority Lien Debt or Junior Lien Debt (or any Refinancing Indebtedness Incurred to refinance any of the foregoing) or owns, directly or indirectly, a Subsidiary that provides such a guarantee, or is such a primary obligor.

"U.S. Person" means a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" has the meaning assigned to such term in Section 2.12(d).

"Volumetric Production Payments" means production payment obligations recorded as deferred revenue in accordance with GAAP, together with all undertakings and obligations in connection therewith.

"Voting Stock" of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

"Warrants" means those warrants issued to the holders of the Senior Secured Notes as of the date hereof to purchase shares of Common Stock of the Borrower.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (1) the amount of each then remaining scheduled installment, sinking fund, serial maturity or other required scheduled payments of principal, including payment at final scheduled maturity, in respect thereof by (2) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (b) the then outstanding principal amount of such Indebtedness; provided that the effects of any prepayments made on such Indebtedness shall be disregarded in making such calculation.

"Wholly-Owned Subsidiary" means a Restricted Subsidiary, all the Capital Stock of which (other than directors' qualifying shares) is owned by the Borrower or one or more other Wholly-Owned Subsidiaries.

"Withdrawal Liability" means 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.

"Withholding Agent" means the Borrower, any other Credit Party and the Administrative Agent.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.02 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". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments restatements, amendments and restatements, supplements or modifications set forth herein or in any other Loan Document), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" or "Property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, and (f) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time. No provision of this Agreement or any other Loan Document shall be construed or interpreted to the disadvantage of any party hereto by reason of such party's having, or being deemed to have, drafted, structured, or dictated such provision.

Section 1.03 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Majority Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

Section 1.04 Time of Day. Unless otherwise specified, all references to times of day shall be references to Central time (daylight or standard, as applicable).

ARTICLE II

THE CREDITS

Section 2.01 Term Loans.

(a) Subject to the terms and conditions set forth herein, each Tranche A Term Loan Lender severally (and not jointly) agrees to make a Term Loan in connection with the exchange, pursuant to the Exchange Agreement, of one or both of a Tranche A Fairfax Term Loan or Tranche A Exchange Term Loan, as applicable, (each a "Tranche A Term Loan") to the Borrower on the Effective Date, in an amount equal to such Lender's Tranche A Term Loan Commitment, in each case as provided in subsection (b) below. Amounts repaid or prepaid in respect of Tranche A Term Loans may not be reborrowed.

(b) The Borrower agrees that each Lender's obligation to make a Tranche A Term Loan to the Borrower as provided hereunder shall be satisfied only by the deemed exchange by such Lender of 100% of its Existing Exchanged Loans as provided in the Exchange Agreement, as prepayment in full and on a cashless basis, for such Lender's Commitment as specified on Schedule 2.01 pursuant to the cashless settlement mechanism specified in the Exchange Agreement. The Borrower hereby directs each Lender to so deliver the proceeds of the Tranche A Term Loans. For the avoidance of doubt, the deemed exchange and delivery of the proceeds of the Tranche A Term Loans as described in this Section 2.01(b) shall be the only means by which the Lenders shall make the Tranche A Term Loans hereunder, and nothing in this Agreement shall require any Lender to make its Tranche A Term Loans by making funds available to the Administrative Agent or the Borrower.

Section 2.02 Termination and Reduction of the Commitments. Unless previously terminated, the Tranche A Term Loan Commitments shall terminate on the earlier to occur of (x) 5:00 p.m. on the Effective Date and (y) in the case of any Lender's Commitment, the date of termination of the Exchange Agreement.

Section 2.03 Loans and Borrowings. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

Section 2.04 Requests for Borrowings. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone not later than 11:00 a.m. New York time, ten (10) Business Days before the date of the proposed Borrowing (other than the initial Borrowing hereunder, which shall be deemed funded on the Effective Date). Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery, telecopy or electronic mail to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.03:

(i) the aggregate amount of the requested Borrowing (which shall be the aggregate amount of the Commitments of the Lenders);

(ii) the date of such Borrowing, which shall be the Effective Date and a Business Day; and

(iii) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.05.

Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 2.05 Deemed Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the Effective Date as provided for in Section 2.01(b) above.

(b) Unless the Administrative Agent shall have received written notice from a Lender prior to the Effective Date that such Lender will not make such Lender's Loans on the Effective Date, the Administrative Agent may assume that such Lender has made its Loans on the Effective Date in accordance with clause (a) of this Section and Section 2.01(b).

Section 2.06 Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Term Lender the then unpaid principal amount of each Term Loan, together with all accrued and unpaid interest thereon in cash, on the Term Loan Maturity Date.

(b) The Borrower and each surety, endorser, guarantor and other party ever liable for payment of any sums of money payable under this Agreement, jointly and severally waive presentment and demand for payment, notice of intention to accelerate the maturity, protest, notice of protest and nonpayment, as to the payments due under this Agreement or any other Loan Document and as to each and all installments hereunder and thereunder, and agree that their liability under this Agreement or any other Loan Document shall not be affected by any renewal or extension in the time of payment hereof, or in any indulgences, or by any release or change in any security for the payment of the Obligations, and hereby consent to any and all such renewals, extensions, indulgences, releases or changes.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) The entries made in the accounts maintained pursuant to clauses (c) or (d) of this Section 2.06 shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(f) Any Lender or Participant may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender or Participant a promissory note payable to the order of such Lender or Participant (or, if requested by such Lender or Participant, to such Lender or Participant and its registered assigns) and in the form attached hereto as Exhibit E. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 10.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

Section 2.07 Optional Prepayment of Loans.

(a) Tranche A Fairfax Term Loans.

(1) Subject to Section 2.07(b)(6), the Borrower shall not have the right at any time to optionally or voluntarily prepay any Borrowing of Term Loans attributable to the exchange of the Tranche A Fairfax Term Loans (whether in whole and or in part).

(2) If, notwithstanding immediately preceding clause (a), an optional or voluntary prepayment of any Borrowing of Term Loans attributable to the exchange of the Tranche A Fairfax Term Loans shall occur, each such prepayment shall be applied

ratably to the Loans included in the prepaid Borrowing of Term Loans attributable to the exchange of the Tranche A Fairfax Term Loans and each such prepayment shall be accompanied by accrued interest to the extent required by Section 2.10 (but, for the avoidance of doubt, which interest shall be paid entirely in cash) and the Make-Whole Amount.

(b) Tranche A Exchange Term Loans.

(1) Subject to clause (b)(6) below, at any time prior to October 26, 2018, the Borrower may, on one or more occasions, prepay all or any portion of the Term Loans attributable to the exchange of the Tranche A Exchange Term Loans, upon notice as provided in Section 2.07(b)(5), at a price equal to 100% of the principal amount of the Term Loans attributable to the exchange of the Tranche A Exchange Term Loans prepaid, plus the Make-Whole Amount as of the date of prepayment, plus accrued and unpaid interest, to, but excluding, the date of prepayment (subject to the right of the Lenders on the relevant regular record date to receive interest due on an Interest Payment Date that is prior to the date of prepayment). Borrower shall calculate the Make-Whole Amount and provide such calculation to the Administrative Agent and the Lenders at least two (2) Business Days before the date of any such prepayment; provided that such calculation shall be subject to the review and approval of the Lenders. In no event shall the Administrative Agent have any duty, responsibility, or liability with respect to the calculations of the Make-Whole Amount, which calculations shall be the sole responsibility of Borrower.

(2) Subject to clause (b)(6) below, at any time on or after October 26, 2018, the Borrower may, on one or more occasions, prepay all or any portion of the Term Loans attributable to the exchange of the Tranche A Exchange Term Loans, upon notice as provided in Section 2.07(b)(5), at a price equal to 100% of the principal amount of the Term Loans attributable to the exchange of the Tranche A Exchange Term Loans prepaid, plus the premium (expressed as percentages of the principal amount to be prepaid) set forth below if prepaid during the 12-month period beginning on October 26th of the years indicated below, plus accrued and unpaid interest, to, but excluding, the date of prepayment (subject to the right of the Lenders on the relevant regular Record Date to receive interest due on an Interest Payment Date that is prior to the date of prepayment):

Year	Premium
2018	6.25%
2019 and thereafter	0%

(3) For purposes hereof, "Applicable Premium" means either or both of the Make-Whole Amount and the premium specified in Section 2.07(b)(2), as applicable.

(4) Except pursuant to Section 2.07(b)(1) or (2) or (6), or Section 2.08, the Loans may not be prepaid at the Borrower's option. Any prepayment made pursuant to this Section 2.07(b) shall be made pursuant to the provisions of Sections 2.13.

(5) To make a prepayment, the Borrower shall deliver at least three Business Days' prior written or fax notice (or telephone notice promptly confirmed by written or fax notice) to the Administrative Agent before 12:00 (noon), New York City time. Each such notice of prepayment shall specify the prepayment date and the principal amount of Loans to be prepaid, which date may not be more than 30 days after the date of notice of prepayment, shall be irrevocable and shall commit the Borrower to prepay Tranche A Exchange Term Loans in the amount stated therein on the date stated therein; provided, however, that (1) if such prepayment is for all of the then outstanding Tranche A Exchange Term Loans, then the Borrower may revoke such notice by written notice to the Administrative Agent no later than 12:00 (noon), New York City time, on the date of prepayment and/or extend the prepayment date by not more than five Business Days and (2) if such prepayment is a partial prepayment, it shall be in an amount that is an integral multiple of $1,000,000 and not less than $5,000,000.

(6) Notwithstanding anything herein to the contrary, in the event that the Borrower elects to make a prepayment of Term Loans attributable to the exchange of the Tranche A Exchange Term Loans pursuant to Section 2.07(b)(1) or (2), the Borrower shall concurrently, on a ratable basis, make a prepayment of Term Loans attributable to the exchange of the Tranche A Fairfax Term Loans, together with accrued interest to the extent required by Section 2.10 (but, for the avoidance of doubt, which interest shall be paid entirely in cash) and the Make-Whole Amount in accordance with Section 2.07(a)(2).

Section 2.08 Mandatory Prepayment of Loans.

(a) If the Borrower or any Restricted Subsidiary receives Net Cash Proceeds in respect of any Asset Sale or Disposes of any Oil and Gas Properties at any time (whether pursuant to a Disposition of Equity Interests of a Restricted Subsidiary permitted pursuant to Section 6.04 or otherwise), subject to clause (e) of this Section 2.08 and to the terms of the Intercreditor Agreement, the Borrower shall prepay Term Loans in an amount equal to 100% of the Net Cash Proceeds of such Disposition on or within two (2) Business Days of the date it or any Restricted Subsidiary receives the Net Cash Proceeds from such Disposition; provided, any Net Cash Proceeds from any such Disposition received by Borrower or any Restricted Subsidiary may be used within three hundred sixty (360) days after such Disposition to (i) acquire property, plant and equipment or any business entity used or useful in carrying on the business of the Borrower and its Restricted Subsidiaries or to improve or replace any existing property of the Borrower and its Restricted Subsidiaries used or useful in carrying on the business of the Borrower and its Restricted Subsidiaries (the foregoing, collectively, "replacement assets"), or to make capital expenditures in Oil and Gas Properties; provided, further, for purposes of this sub-clause (i), any Net Cash Proceeds attributable to a Disposition of an asset owned by a Credit Party must be reinvested in replacement assets owned by one or more Credit Parties or to make capital expenditures in Oil and Gas Properties owned by one or more Credit Parties; (ii) subject to Section 2.13(b) (if applicable), make an offer (an "Asset Sale Offer") to prepay in cash the Loans, on pro rata basis, pursuant to prepayment procedures reasonably acceptable to the Administrative Agent, (iii) to permanently repay, redeem or repurchase (and permanently reduce the commitments with respect to) any Senior Priority Lien Debt and other outstanding Senior Priority Lien Obligations or (iv) any combination of the foregoing. The offer price in any Asset

Sale Offer shall be payable in cash and will be equal to (x) 100% of principal amount plus accrued and unpaid interest to the date of prepayment plus the Make-Whole Amount in the case of Term Loans attributable to the exchange of the Tranche A Fairfax Term Loans and (y) 100% of principal amount plus accrued and unpaid interest to the date of prepayment in the case of Term Loans attributable to the exchange of the Tranche A Exchange Term Loans.

Each Lender may accept all or a portion of its pro rata share of any Asset Sale Offer (any amounts not accepted, the "Declined Amounts") by providing written notice (an "Acceptance Notice") to the Administrative Agent and the Borrower no later than 5:00 p.m. ten Business Days after the date of delivery of such Asset Sale Offer. Each Acceptance Notice delivered by a Lender shall specify the principal amount of the Loans to be prepaid from such Lender; provided that (i) such amount shall not exceed such Lender's pro rata share of the Asset Sale Offer and (ii) if such Lender fails to specify any such amount, it shall be deemed to have requested its full pro rata share of such Asset Sale Offer. If a Lender fails to deliver an Acceptance Notice to the Administrative Agent within the time frame specified above, such failure will be deemed a full rejection of such Asset Sale Offer. The Borrower shall prepay all Loans required to prepaid by it under this Section 2.08(a) no later than five Business Days after expiration of the time period for acceptance by the Lenders of the Asset Sale Offer. Any Declined Amounts shall no longer be subject to this Section 2.08 and may be used by the Borrower in any way not prohibited by this Agreement. If the aggregate principal amount of Loans requested to be repaid exceeds the aggregate amount to be repaid by the Borrower pursuant to this Section 2.08, the Administrative Agent shall apply the amounts to be repaid by the Borrower to the Loans requested to be repaid on a pro rata basis based on the principal amount of such Loans.

(b) In the event and on each occasion that any Net Cash Proceeds are received by or on behalf of any Credit Party in respect of the incurrence of any Indebtedness after the Effective Date (other than Indebtedness permitted to be incurred under Section 7.01, subject to clause (e) of this Section 2.08 and to the terms of the Intercreditor Agreement) the Borrower shall, immediately after such Net Cash Proceeds are received by any Credit Party, apply such amounts to prepay pro rata among the Term Lenders (x) Term Loans attributable to the exchange of the Tranche A Fairfax Term Loans in an aggregate amount equal to 100% of such Net Cash Proceeds, together with the Make-Whole Amount, and (y) the Term Loans attributable to the exchange of the Tranche A Exchange Term Loans in an aggregate amount equal to 100% of such Net Cash Proceeds.

(c) Upon the occurrence of a Change of Control the Borrower shall immediately prepay, in full, in cash, the aggregate outstanding (x) Term Loans attributable to the exchange of the Tranche A Fairfax Term Loans, together with accrued and unpaid interest (if any) to the date of such prepayment and the Make-Whole Amount, and (y) Term Loans attributable to the exchange of the Tranche A Exchange Term Loans in an amount equal to 101% of the aggregate principal amount of such Loans, plus accrued and unpaid interest (if any) to the date of such prepayment.

(d) Prepayments pursuant to this Section shall be accompanied by accrued interest to the extent required by Section 2.10 and any Applicable Premium (including, for the avoidance of doubt, any Make-Whole Amount), if any, required under Section 2.09(b), all of

which shall be paid in cash. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Amounts applied to the payment of Term Loans pursuant to this Section may not be re-borrowed.

(e) Notwithstanding anything in this Section 2.08 to the contrary, no prepayments of outstanding Loans that would otherwise be required to be made under clauses (a) or (b) of this Section 2.08 shall be required if such prepayment is prohibited by the Intercreditor Agreement.

Section 2.09 Fees and Applicable Premium

(a) Borrower agrees to pay to the Administrative Agent and the Collateral Trustee, for their own account, any such fees payable in the amounts and at the times separately agreed upon between the Borrower, the Administrative Agent and/or the Collateral Trustee.

(b) In the event any mandatory or voluntary repayment or prepayment (including, without limitation, any prepayment pursuant to an Asset Sale Offer) of the Term Loans is made prior to the Term Loan Maturity Date, including as a result of the termination of this Agreement and repayment of the Obligations at any time prior to the Term Loan Maturity Date, for any reason, including (i) termination upon the election of the Majority Lenders to terminate after the occurrence and during the continuation of an Event of Default (or, in the case of the occurrence of any Event of Default described in clauses (g) or (h) of Article VIII with respect to the Borrower or any Restricted Subsidiary, automatically upon the occurrence thereof), (ii) foreclosure and sale of Collateral, (iii) sale of the Collateral in any insolvency proceeding, or (iv) restructure, reorganization, or compromise of the Obligations by the confirmation of a plan of reorganization or any other plan of compromise, restructure, or arrangement in any insolvency proceeding, then, in view of the impracticability and extreme difficulty of ascertaining the actual amount of damages to the Term Lenders or profits lost by the Term Lenders as a result of such early payment or termination, and by mutual agreement of the Borrower and the Term Lenders as to a reasonable estimation and calculation of the lost profits or damages of the Term Lenders, the Borrower shall pay in cash, pro rata among the Term Lenders that hold Term Loans based on their respective outstanding principal amounts on the date of such prepayment, the Applicable Premium (including, for the avoidance of doubt, any Make-Whole Amount), measured as of the date of such payment or termination. Borrower shall calculate the Applicable Premium (including, for the avoidance of doubt, any Make-Whole Amount) and provide such calculation to Administrative Agent and the Term Lenders at least two (2) Business Days before the date any such prepayment is made; provided that such calculation shall be subject to the review and approval of the Term Lenders. The Administrative Agent shall disburse any such prepayment (together with the Applicable Premium (including, for the avoidance of doubt, any Make-Whole Amount) which has been delivered to Administrative Agent by Borrower at the time of the prepayment) to the Term Lenders upon Administrative Agent's receipt thereof. In no event shall the Administrative Agent have any duty, responsibility or liability with respect to the calculations of the Applicable Premium (including, for the avoidance of doubt, any Make-Whole Amount), which calculation shall be the sole responsibility of Borrower.

(c) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent. Subject to Section 10.13, fees paid shall not be refundable under any circumstances.

Section 2.10 Interest.

(a) Cash Interest Payments. Except as provided in this Section 2.10 (and, for the avoidance of doubt, including clause (c) below), interest on the outstanding principal amount of the Tranche A Term Loans shall be payable entirely in cash (such interest, "Cash Interest") on the relevant Interest Payment Date. Cash Interest on the Tranche A Term Loans shall accrue at a rate of 12.5% per annum and be payable in cash (the "Cash Interest Rate"). Notwithstanding anything in this Agreement to the contrary, for so long as the Senior Secured Notes are outstanding, the Borrower shall not be permitted to make payments of Cash Interest for any applicable Interest Payment Date (and, for the avoidance of doubt, shall instead be required to make payments of PIK Interest for such applicable Interest Payment Date) if (i) for such applicable Interest Payment Date and for the relevant quarterly interest payment period (or for the immediately prior quarterly interest payment period), the Borrower makes payments of any amount of PIK Interest (under and as defined in the Senior Secured Notes Indenture) under the Senior Secured Notes Indenture for such Interest Payment Date (except with respect to the June 20, 2017 Interest Payment Date), (ii) a Default or Event of Default (as defined under the Senior Secured Notes Indenture) has occurred and is continuing under the Senior Secured Notes or (iii) on a pro forma basis after giving effect to such payment (together with any payment to be made substantially concurrently therewith under the Senior Secured Notes Indenture), the Borrower has Liquidity, on a pro forma basis, of less than $175.0 million (such sentence being herein referred to as the "Cash Interest Payment Conditions").

(b) PIK Interest Payments. Subject to the restrictions in this clause (b) and in clause (c) below, the Borrower may elect, at its option, to pay all or a portion of the interest due on the Tranche A Term Loans on the applicable Interest Payment Date by (1) issuing PIK Shares to the Lenders (such payments, "PIK Share Payments") or (2) paying such interest in kind by capitalizing (and thereby increasing) the outstanding principal amount of the Tranche A Term Loans (such payments, "PIK Loan Payments", with the payment of interest through PIK Share Payments or through PIK Loan Payments being herein referred to as "PIK Interest"), and in each case, notifying the Administrative Agent as set forth in Section 2.10(f). Any PIK Interest on the Tranche A Term Loans shall accrue at a rate of 15.0% per annum (the "PIK Interest Rate"). (ii) The Borrower's ability to pay PIK Interest as PIK Share Payments is subject to the following conditions: (A) the Borrower shall have received the Requisite Shareholder Approvals, (B) the PIK Share Payment shall not result in a beneficial owner of Obligations owed under the Term Loans, such beneficial owner's Affiliates and any person subject to aggregation with such beneficial owner or its Affiliates under Sections 13(d) and 14(d) of the Exchange Act, beneficially owning (as defined in Rules 13d-3 or 13d-5 under the Exchange Act, except that for purposes of this provision such holder shall be deemed to have "beneficial ownership" of all shares of Common Stock that any such holder has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Borrower or any of its direct or indirect parent entities (or their successors by merger, consolidation or purchase of all or substantially all of their assets), (C) the number of PIK Shares to be issued shall not be in excess of the

authorized amount of Common Stock available under the Borrower's charter therefor, (D) the PIK Shares shall be (x) listed on the New York Stock Exchange or any other exchange on which the Common Stock is then listed or the over the counter market and (y) duly authorized, validly issued and non-assessable, and the issuance of such PIK Shares shall not be subject to any preemptive or similar rights and (E) the Borrower's Resale Registration Statement shall have been declared effective by the SEC subject to any limitations set forth in the Registration Rights Agreement. If the foregoing conditions are not met and the Borrower otherwise has the ability to elect to pay PIK Interest, the Borrower may pay such PIK Interest as PIK Loan Payments. To the extent the Shelf Registration Statement is not effective and/or any PIK Share Payments are issued in any manner not involving a registered issuance under the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder, the certificates or book-entry interests representing such shares shall bear a legend to such effect which shall be removed at the request of a lender subject to receipt of customary certificates and opinions. The Borrower will cooperate with the Lenders with respect to any such request.

(c) For any Interest Payment Date on or prior to December 31, 2018 and subject to the Cash Interest Payment Conditions, (1) the Borrower shall be permitted to pay PIK Interest in its sole discretion and (2) interest on the outstanding principal amount of the Tranche A Term Loans for the relevant quarterly interest payment period shall accrue at the PIK Interest Rate unless, and only unless, the Borrower delivers to the Administrative Agent, no later than the 20th day prior to each Interest Payment Date, written notification, executed by a Responsible Officer of the Borrower, of its intention to pay Cash Interest for the applicable Interest Payment Date, setting forth the amount of Cash Interest to be paid on such Interest Payment Date and certifying that the Borrower is permitted to pay Cash Interest in accordance with this Agreement. For any Interest Payment Date after December 31, 2018 and subject to the Cash Interest Payment Conditions, interest on the outstanding principal amount of the Tranche A Term Loans for the relevant quarterly interest payment period shall accrue at the Cash Interest Rate, unless, and only unless to the extent applicable, if the Liquidity for such applicable quarter shall:

(1) equal or exceed $225.0 million, then the Borrower must pay Cash Interest on 100% of the principal amount of Tranche A Term Loans outstanding, payable at the applicable Cash Interest Rate, and no PIK Interest may be paid;

(2) equal or exceed $200.0 million but be less than $225.0 million, then the Borrower shall pay interest on (x) up to 25% (the applicable percentage determined by the Borrower) of the then outstanding principal amount of the Tranche A Term Loans as PIK Interest, such PIK Interest payable at the applicable PIK Interest Rate (and shall otherwise be deemed to have accrued at such rate), and (y) 100% (minus the applicable, if any, elected percentage under immediately preceding clause (x)) of the then outstanding principal amount of the Term Loans as Cash Interest, payable at the applicable Cash Interest Rate;

(3) equal or exceed $175.0 million but be less than $200.0 million, then the Borrower shall pay interest on (x) up to 50% (the applicable percentage determined by the Borrower) of the then

outstanding principal amount of the Tranche A Term Loans as PIK Interest, such PIK Interest payable at the applicable PIK Interest Rate (and shall otherwise be deemed to have accrued at such rate), and (y) 100% (minus the applicable, if any, elected percentage under immediately preceding clause (x)) of the then outstanding principal amount of the Term Loans as Cash Interest, payable at the applicable Cash Interest Rate;

(4) equal or exceed $150.0 million but be less than $175.0 million, then the Borrower shall pay interest on (x) up to 75% (the applicable percentage determined by the Borrower) of the then outstanding principal amount of the Tranche A Term Loans as PIK Interest, such PIK Interest payable at the applicable PIK Interest Rate (and shall otherwise be deemed to have accrued at such rate), and (y) 100% (minus the applicable, if any, elected percentage under immediately preceding clause (x)) of the then outstanding principal amount of the Term Loans as Cash Interest, payable at the applicable Cash Interest Rate; and

(5) be less than $150.0 million, then the Borrower shall pay interest on (x) up to 100% (the applicable percentage determined by the Borrower) of the then outstanding principal amount of the Tranche A Term Loans as PIK Interest, such PIK Interest payable at the applicable PIK Interest Rate (and shall otherwise be deemed to have accrued at such rate), and (y) 100% (minus the applicable, if any, elected percentage under immediately preceding clause (x)) of the then outstanding principal amount of the Term Loans as Cash Interest, payable at the applicable Cash Interest Rate.

(d) Payment of PIK Share Payments.

(1) PIK Share Payments shall be payable in PIK Shares in an amount calculated by the Borrower by dividing the outstanding balance of the accrued PIK Interest after giving effect to any interest to be paid in Cash Interest on the outstanding principal amount of the Tranche A Term Loans by the 20-day volume weighted average price per share of the Borrower's Common Stock on the New York Stock Exchange (or the over-the-counter market or other exchange on which the Common Stock is then listed) calculated as at the end of the three Trading Days prior to the Determination Date, rounded up to the nearest share of Common Stock (a "PIK Share Payment"). With respect to any PIK Share Payments, the Borrower shall deliver the applicable PIK Shares to the Lenders on the relevant Interest Payment Date. On the relevant Interest Payment Date, the Borrower shall deliver to the Administrative Agent (x) written notification, executed by a Responsible Officer of the Borrower certifying that the issuance of the PIK Shares as payment of all or a portion of PIK Interest on such Interest Payment Date has been made in accordance with this Agreement and (y) the written notification, executed by a Responsible Officer of the Borrower delivered to the applicable Lenders with respect to such Interest Payment Date pursuant to Section 2.10(f).

(2) PIK Loan Payments shall be effected, by increasing the principal amount of the outstanding Tranche A Term Loans by a dollar amount equal to the percentage of PIK Interest to be paid thereon, after giving effect to any interest to be paid in Cash Interest, less any PIK Share Payment to be made on such Interest Payment Date (rounded up to the nearest $1.00), automatically without any further action by any Person.

(3) In the event that the Borrower is permitted to and elects to pay a portion of the interest on the Term Loans as Cash Interest and a portion as PIK Interest, such Cash Interest and PIK Interest shall be paid to (or for the account of) Lenders pro rata in accordance with their interests.

(4) PIK Share Payments shall be made by the Borrower to the respective Lenders and certified to the Administrative Agent in accordance with Section 2.10(d)(1).

(e) The insufficiency or lack of funds available to the Borrower to pay Cash Interest as required pursuant to this Section 2.10 shall not permit the Borrower to pay PIK Interest in respect of any Interest Payment Date and the sole right of the Borrower to elect to pay PIK Interest shall be subject to the terms and conditions set forth in Sections 2.10(b) and (c).

(f) No later than the 20th day prior to each Interest Payment Date, the Borrower shall deliver to the Administrative Agent written notification, executed by a Responsible Officer of the Borrower certifying (i) that the Borrower is permitted to pay PIK Interest in the amounts set forth in the notice on the next Interest Payment Date in accordance with this Agreement and is electing to pay PIK Interest on the next Interest Payment Date, (ii) the amount of interest to be paid on the next Interest Payment Date, (iii) the amount of PIK Interest to be paid as PIK Loans, if any, on the next Interest Payment Date and (iv) the amount of PIK Interest to be paid as PIK Shares, if any, on the next Interest Payment Date and the number of PIK Shares, if any, to be issued in connection therewith. The Administrative Agent shall promptly deliver a copy of such notice to the Lenders.

(g) (i) If the Borrower shall default in the payment of any principal of or interest on any Loan or any other amount due hereunder or under any other Loan Document, by acceleration or otherwise, or (ii) if any Event of Default under Article VIII (other than clauses (a) or (b) thereunder) has occurred and is continuing and the Majority Lenders so vote (or, in the case of the occurrence of any Event of Default described in clauses (g) or (h) of Article VIII with respect to the Borrower or any Restricted Subsidiary, automatically upon the occurrence thereof), then, in the case of clause (i) above, until such defaulted amount shall have been paid in full or, in the case of clause (ii) above, from the date such vote has been exercised by the Majority Lenders (or, in the case of the occurrence of any Event of Default described in clauses (g) or (h) of Article VIII with respect to the Borrower or any Restricted Subsidiary, automatically upon the occurrence thereof) and for so long as such Event of Default is continuing, to the extent

permitted by law, all overdue amounts under this Agreement and the other Loan Documents shall bear interest (after as well as before judgment), payable on demand (including accrued and unpaid PIK Interest which for the avoidance of doubt shall be paid in cash), (x) in the case of overdue principal, at the rate otherwise applicable to such Loan pursuant to Section 2.10 plus 2.00% per annum and (y) in all other cases, at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 360 days) equal to the interest rate applicable to Loans pursuant to Section 2.10 plus 2.00% per annum.

(h) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and on the Term Loan Maturity Date; provided that (i) interest accrued pursuant to Section 2.10(b) shall be payable on demand (including accrued and unpaid PIK Interest which for the avoidance of doubt shall be paid in cash) and (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(i) All interest hereunder shall be computed on the basis of a year of 360 days, and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(j) Interest on each Loan shall be payable on the Interest Payment Dates applicable to such Loan except as otherwise provided in this Agreement.

(k) Notwithstanding anything herein to the contrary, the payment of accrued interest in connection with any optional or mandatory prepayment of the Tranche A Term Loans as described under Sections 2.07 or 2.08 shall be payable solely in cash at the applicable Cash Interest rate for the applicable calendar quarter in which such Interest Payment Date occurs.

(l) In the event that any PIK Share Payment is made, the Borrower shall use its best efforts to keep a Resale Registration Statement continuously effective until such time as no PIK Shares are held by any Lender, subject to any rights to delay or suspend or limit such registration pursuant to the Registration Rights Agreement.

(m) The Administrative Agent shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Lenders. Upon request by the Borrower in respect of an Interest Payment Date, the Administrative Agent shall furnish to the Borrower, no later than two Business Days after the related Record Date, a list of names, addresses, federal tax identification numbers and principal amounts of Obligations of the Lenders as of such Record Date. Upon request by the Borrower, in respect of any date that is not an Interest Payment Date, the Administrative Agent shall furnish such information to the Borrower within two Business Days of such request.

Section 2.11 Reserve Requirements; Change in Circumstances.

(a) If any Change in Law shall (1) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender; (2) subject any Recipient to any Taxes (other than (i) Indemnified Taxes, (ii) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (iii) Connection Income Taxes)

on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or (3) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender, and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making or maintaining any Loan, or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or other Recipient, the Borrower will pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth (i) the amount or amounts reasonably necessary to compensate such Lender or its holding company, as the case may be, as specified in clause (a) or (b) of this Section 2.11, (ii) the factual basis for such compensation, and (iii) the manner in which such amount or amounts were calculated, and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.11 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be under any obligation to compensate any Lender under immediately preceding clauses (a) or (b) with respect to increased costs or reductions with respect to any period prior to the date that is 120 days prior to such request if such Lender knew or could reasonably have been expected to know of the circumstances giving rise to such increased costs or reductions and of the fact that such circumstances would result in a claim for increased compensation by reason of such increased costs or reductions; provided, further, that the foregoing limitation shall not apply to any increased costs or reductions arising out of the retroactive application of any Change in Law within such 120-day period. The protection of this Section 2.11 shall be available to each Lender regardless of any possible contention of the invalidity or inapplicability of the Change in Law that shall have occurred or been imposed.

Section 2.12 Taxes.

(a) Any and all payments by or on account of any obligation of the Borrower or any other Credit Party under any Loan Document shall be made without deduction or

withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Credit Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.12) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) In addition, the Credit Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) The Credit Parties shall indemnify the Administrative Agent and each Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.12) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified 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 (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower or any other Credit Party 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.

(1) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent 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. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.12(d)(2)(i), 2.12(d)(2)(ii) and 2.12(d)(4) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(2) Without limiting the generality of the foregoing,

(i) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding;

(ii) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(A) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or W-8BEN-E (as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E (as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(B) executed originals of IRS Form W-8ECI;

(C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit H-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN or W-8BEN-E (as applicable); or

(D) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-4 on behalf of each such direct and indirect partner;

(3) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(4) 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. Solely for purposes of this clause (4), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(5) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(e) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (1) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (2) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.04 relating to the maintenance of a Participant Register and (3) 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 clause (e).

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.12 (including by the payment of additional amounts pursuant to this Section 2.12), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.12 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this clause (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this clause (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this clause (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This clause (f) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) Each party's obligations under this Section 2.12 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document. For purposes of this Section 2.12, the term "applicable law" includes FATCA.

Section 2.13 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 2.11 or Section 2.12, or otherwise) prior to 12:00 noon on the date when due, in immediately available funds, without set-off or counterclaim. 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 (x) to the Administrative Agent at its offices at Wilmington Trust, National Association, 50 South Sixth Street, Suite 1290, Minneapolis, MN 55402, or (y) directly to the applicable Lender as may be specified in writing from time to time by the Administrative Agent, except that payments pursuant to Section 2.11, Section 2.12 and Section 10.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) Subject to the Intercreditor Agreement, any proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall, to the extent not otherwise specified in the Loan Documents, be applied to the payment of such principal, interest, fees or other sum payable under the Loan Documents as specified by the Borrower), or (B) a mandatory prepayment or prepayment pursuant to an Asset Sale Offer (which shall be applied in accordance with Section 2.08) or (ii) after an Event of Default has occurred and is continuing, shall be applied ratably first, to pay any fees, indemnities, or expense reimbursements including amounts then due to the Administrative Agent from the Borrower or any other Credit Party, second, to pay any fees or expense reimbursements then due to the Lenders from the Borrower or any other Credit Party, third, to pay interest then due and payable on the Loans ratably, fourth, to pay the portion of the Obligations constituting unpaid principal of the Loans, in each case, ratably among the Administrative Agent and the Lenders, and fifth, to the payment of any other Obligations due to the Administrative Agent, any Lender or any other Secured Party by any Credit Party or any Restricted Subsidiary. The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Obligations.

(c) Subject to the Intercreditor Agreement, if any Lender shall, by exercising any right of set-off or counterclaim or otherwise (including any right of set-off exercised with respect to a Swap Agreement), obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this clause (c) shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this clause (c) shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received written 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, but shall have no obligation to do so, distribute to the Lenders the amount 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 Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.13(d) or Section 10.03(c), then the Administrative Agent may, in its discretion and notwithstanding any contrary provision hereof (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender and for the benefit of the Administrative Agent to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid, and/or (ii) hold any such amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender under such Sections, in the case of each of (i) and (ii) above, in any order as determined by the Administrative Agent in its discretion.

Section 2.14 Mitigation Obligations; Replacement of Lenders; Illegality.

(a) If any Lender requests compensation under Section 2.11, 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 2.12, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.11 or Section 2.12, 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 documented and reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.11, 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 2.12, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder (but excluding, for the avoidance of doubt, any amounts attributable to the Applicable Premium), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other

amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.11 or payments required to be made pursuant to Section 2.12, such assignment will result in a reduction in such compensation or payments. 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.

(c) If (i) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions of this Agreement or any other Loan Document that requires approval of all of the Lenders under Section 10.02, the consent of Super-Majority Lenders shall have been obtained but the consent of one or more of such other Lenders (each a "Non-Consenting Lender") whose consent is required has not been obtained or (ii) a Lender is a Defaulting Lender; then, in each case, the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, elect to replace such Non-Consenting Lender or Defaulting Lender, as the case may be, as a Lender party to this Agreement in accordance with and subject to the restrictions contained in, and consents required by Section 10.04; provided that (x) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, and (y) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder (but excluding, for the avoidance of doubt, any amounts attributable to the Applicable Premium), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts). A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a consent by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply or, in the case of a Defaulting Lender, such Lender is no longer a Defaulting Lender.

Section 2.15 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) Such Defaulting Lender shall not have the right to vote on any issue on which voting is required (other than to the extent expressly provided in Section 10.02(b)) and the Credit Exposure of such Defaulting Lender shall not be included in determining whether the Majority Lenders or the Super-Majority Lenders have taken or may take any action hereunder.

(b) If a Defaulting Lender (or a Lender who would be a Defaulting Lender but for the expiration of the relevant grace period) as a result of the exercise of a set-off shall have received a payment in respect of its Credit Exposure which results in its Credit Exposure being less than its Applicable Percentage of the Aggregate Credit Exposure, then no payments will be made to such Defaulting Lender until such time as such Defaulting Lender shall have complied with this Section 2.15 and all amounts due and owing to the Lenders has been equalized in accordance with each Lender's respective pro rata share of the Obligations. Further, if at any time prior to the acceleration or maturity of the Loans, the Administrative Agent shall receive any payment in respect of principal of a Loan while one or more Defaulting Lenders shall be party to this Agreement, the

Administrative Agent shall apply such payment first to the Borrowing(s) for which such Defaulting Lender(s) shall have failed to fund its pro rata share until such time as such Borrowing(s) are paid in full or each Lender (including each Defaulting Lender) is owed its Applicable Percentage of all Loans then outstanding. After acceleration or maturity of the Loans, subject to the first sentence of this Section 2.15(b), all principal will be paid ratably as provided in Section 2.15(b).

Section 2.16 Returned Payments. If after receipt of any payment which is applied to the payment of all or any part of the Obligations, the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.16 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.16 shall survive the termination of this Agreement.

Section 2.17 Collection of Proceeds of Production. The Security Instruments contain an assignment by the Borrower and/or the Guarantors to and in favor of the Collateral Trustee for the benefit of the Secured Parties of all of the Borrower's or each Guarantor's interest in and to production and all proceeds attributable thereto which may be produced from or allocated to the Mortgaged Properties. The Security Instruments further provide in general for the application of such proceeds to the satisfaction of the Obligations and other obligations described therein and secured thereby. Notwithstanding the assignment contained in such Security Instruments, (a) unless an Event of Default has occurred and is continuing, neither the Collateral Trustee nor the Administrative Agent nor any Lender will notify the purchaser or purchasers of such production nor take any other action to cause such proceeds to be remitted to the Collateral Trustee nor the Administrative Agent nor any Lender, but the Collateral Trustee, Administrative Agent and each Lender will instead permit such proceeds to be paid to the relevant Credit Party and (b) the Lenders hereby authorize the Collateral Trustee to take such actions as may be necessary to cause such proceeds to be paid to the relevant Credit Party so long as no Event of Default has occurred and is continuing.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Each Credit Party represents and warrants to the Lenders that (it being understood and agreed that such representations and warranties are deemed to be made concurrently with and after giving effect to the consummation of the Transactions on the Effective Date):

Section 3.01 Organization; Powers. Each Credit Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

Section 3.02 Authorization; Enforceability. The Transactions are within each Credit Party's corporate, limited liability company or partnership powers and have been duly authorized by all necessary corporate, limited liability company or partnership and, if required, stockholder action. This Agreement and each of the Loan Documents to which a Credit Party is party have been duly executed and delivered by such Credit Party and constitute legal, valid and binding obligations of such Credit Party, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 3.03 Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and, after the Effective Date, the filing of this Agreement and related Loan Documents by the Borrower with, and other required disclosures required by, the SEC pursuant to the requirements of the Exchange Act, (b) will not violate any applicable law or regulation or the charter, by-laws or other Organizational Documents of the Borrower or any Restricted Subsidiary or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument evidencing Material Indebtedness or a Material Sales Contract binding upon the Borrower or any Restricted Subsidiary or any of their respective assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any Restricted Subsidiary, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any Restricted Subsidiary not otherwise permitted under Section 6.07.

Section 3.04 Financial Condition; No Material Adverse Change.

(a) The Borrower has heretofore furnished to the Lenders the consolidated balance sheet and related statements of income and cash flows of the Borrower and its Consolidated Subsidiaries (i) as of and for the fiscal years ended December 31, 2013, December 31, 2014, and December 31, 2015, reported on by KPMG LLP, independent public accountants, and (ii) as of and for the fiscal quarters ended March 31, 2015, June 30, 2015 and September 31, 2015, setting forth in comparative form the figures for the corresponding period of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Responsible Officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its Consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes, in the case of the statements referred to in clause (ii) above.

(b) Since December 31, 2015, there has been no material adverse change in the business, assets, operations, prospects or condition, financial or otherwise, of the Borrower and its Restricted Subsidiaries, taken as a whole (it being understood that changes in commodity prices for Hydrocarbons affecting the oil and gas industry as a whole do not constitute a material adverse change).

Section 3.05 Properties.

(a) Except as otherwise provided in Section 3.15 with respect to Proved Reserves included in the Oil and Gas Properties of the Borrower and each Restricted Subsidiary, the Borrower and each Restricted Subsidiary has good title to, or valid leasehold interests in, all such real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) All material leases and agreements (excluding oil and gas leases which are addressed in Section 3.15) necessary for the conduct of the business of the Borrower and the Restricted Subsidiaries are valid and subsisting, in full force and effect, and there exists no default or event of default, or event or circumstance which with the giving of notice or the passage of time or both would give rise to a default or event of default, under any such lease or agreement which could reasonably be expected to have a Material Adverse Effect.

(c) The rights and Properties presently owned, leased or licensed by the Credit Parties including all easements and rights of way, include all material rights and Properties necessary to permit the Borrower and the Restricted Subsidiaries to conduct their business.

(d) All of the material Properties of the Borrower and the Restricted Subsidiaries (other than the Oil and Gas Properties, which are addressed in Section 3.15) which are reasonably necessary for the operation of their businesses are in good working condition and are maintained in accordance with prudent business standards.

(e) The Borrower and each Restricted Subsidiary owns, or is licensed to use, all trademarks, trade-names, copyrights, patents and other intellectual property material to its business, and the use thereof by the Borrower and such Restricted Subsidiaries, as the case may be, does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 3.06 Litigation and Environmental Matters.

(a) There are no actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any Restricted Subsidiary, (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve this Agreement or the Transactions.

(b) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any Restricted Subsidiary to the Borrower's knowledge (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.

(c) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

Section 3.07 Compliance with Laws and Agreements. The Borrower and each Restricted Subsidiary is in compliance with all Governmental Requirements applicable to it, its Oil and Gas Business, and its Property and there are no pending, or to the knowledge of the Borrower or any Restricted Subsidiary, threatened or anticipated complaints, investigations, enforcement actions or other proceedings (formal or informal, public or non-public) alleging that Borrower or any Restricted Subsidiary is not in compliance with any Governmental Requirements applicable to it, its Oil and Gas Business, or its Property which could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. The Borrower and each Restricted Subsidiary are in compliance with all indentures, agreements and other instruments binding upon it or its Property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default or Event of Default has occurred and is continuing. As of the Effective Date and immediately after giving effect to any extensions of credit hereunder, no default or event of default has occurred and is then continuing under any of the First Lien RBL Documents, Senior Secured Notes Documents, the Existing Second Lien Credit Agreements or under any indenture or similar document related to the Existing Unsecured Notes.

Section 3.08 Investment Company Status; Energy Regulatory Status.

(a) Neither the Borrower nor any Restricted Subsidiary is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

(b) Neither the Borrower nor any Restricted Subsidiary (i) is subject to regulation as a "natural-gas company," under the Natural Gas Act or the regulations of the Federal Energy Regulatory Commission ("FERC") thereunder, (ii) subject to regulation as a "gas utility company," a "public-utility company," or a "holding company" under the Public Utility Holding Company Act of 2005, or FERC's regulations thereunder, or (iii) subject to regulation as a "public utility, " a "natural gas utility," a "natural gas company," a "holding company," or similar term under any state law or regulation.

Section 3.09 Taxes. The Borrower and each Restricted Subsidiary has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Restricted Subsidiary, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

Section 3.10 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 FASB Statement 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than $5,000,000 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 FASB Statement 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than $5,000,000 the fair market value of the assets of all such underfunded Plans.

Section 3.11 Disclosure. The Borrower has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which it or any Restricted Subsidiary is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the other reports, financial statements, certificates or other information furnished by or on behalf of the Borrower or any Restricted Subsidiary to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Section 3.12 Labor Matters. There are no strikes, lockouts or slowdowns against the Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened that could reasonably be expected to have a Material Adverse Effect. The hours worked by and payments made to employees of the Borrower and its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other Law dealing with such matters to the extent that such violation could reasonably be expected to have a Material Adverse Effect.

Section 3.13 Capitalization and Credit Party Information. Schedule 3.13 lists, as of the Effective Date (a) each Subsidiary that is an Unrestricted Subsidiary and for each Unrestricted Subsidiary (x) the full legal name, its jurisdiction of organization, its organizational identification number, its federal tax identification number, the number of shares of capital stock or other Equity Interests outstanding and the owner(s) of such Equity Interests and (y) each Subsidiary of each such Unrestricted Subsidiary and each such Subsidiary, the full legal name, its jurisdiction of organization, its organizational identification number, its federal tax identification number, the number of shares of capital stock or other Equity Interests outstanding and the owner(s) of such Equity Interests, (b) for the Borrower, its full legal name, its jurisdiction of organization, its organizational identification number and its federal tax identification number, and (c) each Restricted Subsidiary and for each Restricted Subsidiary its full legal name, its jurisdiction of organization, its organizational identification number, its federal tax identification number, the number of shares of capital stock or other Equity Interests outstanding and the owner(s) of such Equity Interests.

Section 3.14 Margin Stock. Neither the Borrower nor any Restricted Subsidiary 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 (within the meaning of Regulation U issued by the Board), and no part of the proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying margin stock.

Section 3.15 Oil and Gas Properties. Each Credit Party has good and defensible title to all Proved Reserves included in the Oil and Gas Properties (for purposes of this Section 3.15, "proved Oil and Gas Properties") described in the most recent Reserve Report provided to the Administrative Agent, free and clear of all Liens except Liens permitted pursuant to Section 6.07. All such proved Oil and Gas Properties are valid, subsisting, and in full force and effect, and all rentals, royalties, and other amounts due and payable in respect thereof have been duly paid. Without regard to any consent or non-consent provisions of any joint operating agreement covering any Credit Party's proved Oil and Gas Properties, such Credit Party's share of (a) the costs for each proved Oil and Gas Property described in the Reserve Report is not materially greater than the decimal fraction set forth in the Reserve Report, before and after payout, as the case may be, and described therein by the respective designations "working interests," "WI," "gross working interest," "GWI," or similar terms (except in such cases where there is a corresponding increase in the net revenue interest), and (b) production from, allocated to, or attributed to each such proved Oil and Gas Property is not materially less than the decimal fraction set forth in the Reserve Report, before and after payout, as the case may be, and described therein by the designations "net revenue interest," "NRI," or similar terms. Each well drilled in respect of proved producing Oil and Gas Properties described in the Reserve Report (1) is capable of, and is presently, either producing Hydrocarbons in commercially profitable quantities or in the process of being worked over or enhanced, and the Credit Party that owns such proved producing Oil and Gas Properties is currently receiving payments for its share of production, with no funds in respect of any thereof being presently held in suspense, other than any such funds being held in suspense pending delivery of appropriate division orders, and (2) has been drilled, bottomed, completed, and operated in compliance with all applicable laws, in the case of clauses (1) and (2), except where any failure to satisfy clause (1) or to comply with clause (2) would not have a Material Adverse Effect, and no such well which is currently producing Hydrocarbons is subject to any penalty in production by reason of such well having produced in excess of its allowable production.

Section 3.16 Insurance. Each Credit Party has (a) all insurance policies sufficient for the compliance by each of them with all material Governmental Requirements and all material agreements to which such Credit Party is a party and (b) insurance coverage in such amounts and against such risk (including, without limitation, public liability) that are usually insured against by companies similarly situated and engaged in the same or a similar business for the assets and operations of the Credit Parties. The Administrative Agent and the Lenders have been named as additional insureds in respect of such liability insurance policies and the Administrative Agent has been named as loss payee with respect to Property loss insurance.

Section 3.17 Solvency. After giving effect to the Transactions and any contribution provisions contained in any Loan Document, the Credit Parties and each of the Restricted Subsidiaries, taken as a whole, are Solvent.

Section 3.18 Deposit Accounts. Except for the Excluded Accounts, no Credit Party maintains any deposit or investment account other than such accounts listed on Schedule 3.18.

Section 3.19 Maintenance of Properties. Except for such acts or failures to act as could not be reasonably expected to have a Material Adverse Effect, the Oil and Gas Properties (and Properties unitized therewith) of the Borrower and the Restricted Subsidiaries have been maintained, operated and developed in a good and workmanlike manner and in conformity with all Governmental Requirements and in conformity with the provisions of all leases, subleases or other contracts comprising a part of the Oil and Gas Properties and other contracts and agreements forming a part of the Oil and Gas Properties of the Borrower and the Restricted Subsidiaries. Specifically in connection with the foregoing, except for those as could not be reasonably expected to have a Material Adverse Effect, (a) no Oil and Gas Property of the Borrower or any Restricted Subsidiary is subject to having allowable production reduced below the full and regular allowable (including the maximum permissible tolerance) because of any overproduction (whether or not the same was permissible at the time) and (b) none of the wells comprising a part of the Oil and Gas Properties (or Properties unitized therewith) of the Borrower and the Restricted Subsidiaries is deviated from the vertical more than the maximum permitted by Governmental Requirements, and such wells are, in fact, bottomed under and are producing from, and the well bores are wholly within, the Oil and Gas Properties (or in the case of wells located on Properties unitized therewith, such unitized Properties) of the Borrower and the Restricted Subsidiaries. The wells drilled in respect of proved producing Oil and Gas Properties described in the Reserve Report (other than wells drilled in respect of such proved producing Oil and Gas Properties that have been subsequently Disposed of in accordance with the terms of this Agreement) are capable of, and are presently, either producing Hydrocarbons in commercially profitable quantities or in the process of being worked over or enhanced, and the Credit Party that owns such proved producing Oil and Gas Properties is currently receiving payments for its share of production, with no funds in respect of any thereof being presently held in suspense, other than any such funds being held in suspense pending delivery of appropriate division orders. All pipelines, wells, gas processing plants, platforms and other material improvements, fixtures and equipment owned in whole or in part by the Borrower or any Restricted Subsidiary that are necessary to conduct normal operations are being maintained in a state adequate to conduct normal operations, and with respect to such of the foregoing which are operated by the Borrower or any Restricted Subsidiary, in a manner consistent with the past practices of the Borrower and the Restricted Subsidiaries (other than those the failure of which to maintain in accordance with this Section 3.19 could not reasonably be expected to have a Material Adverse Effect).

Section 3.20 Foreign Corrupt Practices; OFAC.

(a) No Credit Party, nor any director, officer, agent, employee or Affiliate of any Credit Party is aware of or has taken any action, directly or indirectly, that would result in a material violation by such Persons of the FCPA, including without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any

candidate for foreign political office, in contravention of the FCPA; and, the Credit Parties and their Affiliates have conducted their business in material compliance with the FCPA and have instituted and maintained policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(b) No Credit Party, nor any director, officer, agent, employee or Affiliate of any Credit Party is currently subject to any material U.S. sanctions administered by OFAC, and the Borrower will not directly or indirectly use the proceeds from the Loans or lend, contribute or otherwise make available such proceeds to any Subsidiary, Affiliate, joint venture partner or other Person, for the purpose of financing the activities of any Person currently subject to any U.S. sanctions administered by OFAC.

Section 3.21 USA PATRIOT Act. The Borrower and each of the Subsidiaries is in compliance in all material respects with all applicable statutes, regulations and orders of (including any laws relating to terrorism, money laundering, embargoed persons or the Act), and all applicable restrictions imposed by, all governmental bodies, domestic or foreign, in respect of the conduct of its business and the ownership of its property (including, without limitation, applicable statutes, regulations, orders and restrictions relating to environmental standards and controls).

Section 3.22 Security Interest in Collateral.

(a) The provisions of the Mortgages create legal and valid Liens on all the Collateral described therein in favor of the Collateral Trustee, for the benefit of the Secured Parties, and when the Mortgages are filed in the offices specified on Schedule 3.22 (in the case of Mortgages to be executed and delivered on the Effective Date) or in the recording office designated by the Borrower (in the case of any Mortgage to be executed and delivered pursuant to Section 5.12), each Mortgage shall constitute perfected and continuing Liens on the Borrower's and the Restricted Subsidiaries' right, title and interest in the Collateral described therein, securing the Obligations, enforceable against the applicable Credit Party and all third parties, and having priority over all other Liens on the Collateral, subject to the Intercreditor Agreement and Permitted Prior Liens.

(b) Each of the Pledge Agreement and the Security Agreement creates legal and valid Liens on all the Collateral described therein in favor of the Collateral Trustee, for the benefit of the Secured Parties, and when financing statements in appropriate form are filed in the offices specified on Schedule 3.22 at any time, each of the Pledge Agreement and the Security Agreement shall constitute perfected and continuing Liens on each Credit Party's right, title and interest in the Collateral described therein, securing the Obligations, enforceable against the applicable Credit Party and all third parties, and having priority over all other Liens on the Collateral except for Liens permitted by Section 6.02.

ARTICLE IV

CONDITIONS

Section 4.01 Effective Date. This Agreement shall take effect upon, and the rights and obligations (other than the obligations of the Lenders to make Loans hereunder) of each party under this Agreement are subject to, the satisfaction of the following conditions precedent:

(a) The Administrative Agent and the Lenders shall have received from each party hereto either (A) a counterpart of this Agreement (together with the Schedules hereto) signed on behalf of such party or (B) written evidence satisfactory to the Lenders (which may include telecopy or electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent and the Lenders shall have received duly executed copies of the Loan Documents (other than this Agreement) and such other certificates, documents, instruments and agreements as the Administrative Agent and the Lenders shall reasonably request in connection with the transactions contemplated by this Agreement and the other Loan Documents.

(c) The Administrative Agent and the Lenders shall have received such documents and certificates as the Administrative Agent and the Lenders may reasonably request relating to the organization, existence and good standing of each Credit Party, the authorization of the Transactions and any other legal matters relating to the Credit Parties, this Agreement or the Transactions, all in form and substance satisfactory to the Administrative Agent and the Lenders.

(d) (x) Each of the First Lien RBL Amendment, Senior Secured Notes Indenture, the Exchange Term Loan Amendment (which shall include the Junior Lien Credit Agreement), the Collateral Trust Agreement, the Intercreditor Agreement Amendment and the Exchange Agreement shall have become effective and (y) the Administrative Agent and the Lenders shall have received a certificate from a Responsible Officer of the Borrower (1) certifying that the conditions precedent set forth in Section 5 (other than, in each case, clauses (d) and (f) thereof) of the Exchange Agreement has been satisfied and (2) attaching a duly executed and delivered copy of each of the First Lien RBL Amendment, Senior Secured Notes Indenture, the Exchange Term Loan Amendment (which shall include the Junior Lien Credit Agreement), the Collateral Trust Agreement, the Intercreditor Agreement Amendment and the Exchange Agreement, in each case certified by such Responsible Officer as being a true, correct and complete copy of each such agreement.

(e) The Administrative Agent and the Lenders shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Kirkland & Ellis LLP, counsel for the Credit Parties, and such local counsel to the Credit Parties as the Majority Lenders may reasonably request, in form and substance reasonably satisfactory to the Majority Lenders and, in each case, covering such other matters relating to the Credit Parties and this Agreement as the Majority Lenders shall reasonably request.

(f) The Administrative Agent and the Lenders shall have received a certificate, dated the Effective Date and signed by a Responsible Officer of the Borrower, confirming that the Credit Parties have (i) complied with the conditions set forth in clauses (g) and (h) of this Section 4.01, (ii) complied with the covenants set forth in Section 5.06 (and demonstrating such compliance by the attachment of insurance certificates and endorsements) and (iii) complied with the requirements of Section 5.12 and Section 5.13.

(g) The representations and warranties of each Credit Party set forth in the Loan Documents shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) on and as of the Effective Date (at the time of and immediately after giving effect to the Borrower hereunder), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date.

(h) At the time of and immediately after giving effect to such Borrowing, no Default or Event of Default shall have occurred and be continuing.

(i) The Administrative Agent and the Collateral Trustee and the Lenders shall have received all fees and other amounts due and payable on or prior to the Effective Date, and, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder, including all fees, expenses and disbursements of counsel for the Administrative Agent and the Collateral Trustee to the extent invoiced on or prior to the Effective Date, together with such additional amounts as shall constitute such counsel's reasonable estimate of expenses and disbursements to be incurred by such counsel in connection with the recording and filing of Mortgages (and/or Mortgage amendments) and financing statements and the completion of post-closing matters contemplated by the Loan Documents (it being understood that such estimate shall not thereafter preclude further settling of accounts between the Borrower and the Administrative Agent).

(j) The Lenders shall have received the Initial Reserve Report, which report shall be identical to the report most recently delivered under the First Lien RBL Credit Agreement and certified by the Chief Operating Officer of the Borrower as being true, correct and complete.

(k) The Administrative Agent and the Lenders shall have received the results of a Lien search, in form and substance reasonably satisfactory thereto, made against the Credit Parties under the Uniform Commercial Code (or applicable judicial docket) as in effect in each jurisdiction in which filings or recordations under the Uniform Commercial Code should be made to evidence or perfect security interests in all assets of such Credit Party, indicating among other things that the assets of each such Credit Party are free and clear of any Lien (except for Liens permitted by Section 6.02 or discharged on or prior to the Effective Date pursuant to a pay-off letter or other documentation satisfactory to the Majority Lenders).

(l) The Administrative Agent and the Lenders shall have received the Intercreditor Agreement Amendment and the Collateral Trust Agreement, in each case, duly executed by and delivered by each party thereto.

(m) Prior to, or concurrently with, the making of the Loans on the Effective Date, (x) the Lenders shall have exchanged 100% of their respective Existing Exchanged Loans as a lender under the Existing Second Lien Credit Agreements, as applicable, as prepayment, in full and on a cashless basis, for each such Lender's Commitment as specified on Schedule 2.01 pursuant to the cashless settlement mechanism specified in the Exchange Agreement (and such outstanding Existing Exchanged Loans shall have been deemed exchanged pursuant to the terms of the Exchange Agreement and such Existing Exchanged Loans shall have been deemed prepaid and satisfied in full) such that (i) the outstanding term loans under the Junior Lien Credit Agreement, immediately upon giving effect to the transactions contemplated by the Exchange Agreement, shall be in an aggregate principal amount of no more than $17,250,000 and (ii) the outstanding term loans under the Fairfax Credit Agreement, immediately upon giving effect to the transactions contemplated by the Exchange Agreement, shall be in an aggregate principal amount of no more than $0.

(n) The applicable Lenders shall have received promissory notes duly executed by the Borrower for each such Lender that has requested the delivery of a promissory note pursuant to and in accordance with Section 2.06(f).

(o) [Reserved].

(p) [Reserved].

(q) The Administrative Agent and the Lenders shall have received a certificate from the chief financial officer of the Borrower that (i) after giving effect to the Transactions, (A) the Borrower's unrestricted cash (including, for the avoidance of doubt, undrawn availability under the First Lien RBL Credit Agreement) on the Effective Date is not less than $50,000,000 and (B) the aggregate amount of revolving commitments available to the Borrower under the First Lien RBL Credit Agreement are equal to $150,000,000 and (ii) that no Credit Party has made any Swap Modifications in respect of proved developed producing reserves attributable to the Oil and Gas Properties of such Credit Party that would be adverse to any Lender in any material respect.

(r) The Administrative Agent and the Lenders shall have received such UCC financing statements as the Majority Lenders shall specify to fully evidence and perfect all Liens contemplated by the Loan Documents, all of which shall be filed of record in such jurisdictions as the Majority Lenders shall require in its sole discretion.

(s) The Administrative Agent and the Lenders shall have received a Solvency Certificate in the form attached hereto as Exhibit D, dated the Effective Date, and signed by a Responsible Officer of the Borrower.

(t) Each Credit Party shall have obtained all approvals required from any Governmental Authority and all consents of other Persons, in each case that are necessary or advisable in connection with the Transactions and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to the Majority Lenders. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on

the transactions contemplated by the Loan Documents or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(u) There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, in the reasonable opinion of the Majority Lenders, singly or in the aggregate, materially impairs the Transactions, the financing thereof or any of the other transactions contemplated by the Loan Documents or that could reasonably be expected to result in a Material Adverse Effect.

(v) All partnership, corporate and other proceedings taken or to be taken in connection with the Transactions and all documents incidental thereto shall be reasonably satisfactory in form and substance to the Majority Lenders, and the Majority Lenders shall have received all such counterpart originals or certified copies of such documents as the Majority Lenders may reasonably request.

(w) The Administrative Agent and the Lenders shall have received all of the financial statements described in Section 3.04(a).

(x) The Borrower shall have delivered to the Administrative Agent and the Lenders a description of the sources and uses of funding for the Transactions that is consistent with the terms of the Loan Documents and otherwise satisfactory to the Administrative Agent and the Lenders and the capitalization, structure and equity ownership of the Borrower after the Transactions shall be satisfactory to the Lenders in all respects.

(y) The Lenders shall have received such other instruments and documents incidental and appropriate to the transactions provided for herein as the Lenders may reasonably request prior to the Effective Date, and all such documents shall be in form and substance satisfactory to the Lenders.

(z) The Backstop Commitment Parties shall be reasonably satisfied that, as of the Effective Date and after giving effect to the Transactions and the effectiveness of the Exchange Term Loan Amendment and the Exchange Agreement and, in each case, the transactions contemplated thereby, there shall not have occurred and be continuing any "going concern" or similar default or event of default under the documentation governing the First Lien RBL Credit Agreement, the Existing Second Lien Credit Agreements or the Senior Secured Notes.

Each Borrowing shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in the conditions set forth in clauses (g) and (h) of this Section 4.01.

Section 4.02 Compliance with Conditions to Effective Date. For purposes of determining compliance with the conditions specified in this Article IV, each Lender 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 the Lenders unless the Administrative Agent shall have received written notice from such Lender prior to the Effective Date specifying its objection thereto.

ARTICLE V

AFFIRMATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest and premium on each Loan and all fees payable hereunder shall have been paid in full, each Credit Party covenants and agrees with the Lenders that:

Section 5.01 Financial Statements; Other Information. The Borrower will furnish to the Administrative Agent and each Lender:

(a) within ninety (90) days after the end of each fiscal year of the Borrower, the audited consolidated (and unaudited consolidating) balance sheet and related consolidated (and with respect to statements of operations, consolidating) statements of operations, stockholders' equity and cash flows of the Borrower and its Consolidated Subsidiaries as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by a firm of independent public accountants registered with the PCAOB (and following the fiscal year ending December 31, 2017, without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated and consolidating financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated and consolidating basis in accordance with GAAP consistently applied; provided, that if the Borrower has established any Unrestricted Subsidiaries, such consolidated statements shall be accompanied by a balance sheet as of such date, and a statement of income and cash flows for such period, reflecting on a combined basis, for Restricted Subsidiaries and on a combined basis for Unrestricted Subsidiaries, the consolidating entries for each of such types of Subsidiaries;

(b) within forty-five (45) days after the end of each fiscal quarter of the Borrower, the consolidated (and unaudited consolidating) balance sheet and related consolidated (and with respect to statements of operations, consolidating) statements of operations and cash flows of the Borrower and its Consolidated Subsidiaries as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Responsible Officer as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated and consolidating basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes; provided, that if the Borrower has established any Unrestricted Subsidiaries, such consolidated statements shall be accompanied by a balance sheet as of such date, and a statement of income and cash flows for such period, reflecting on a combined basis, for Restricted Subsidiaries and on a combined basis for Unrestricted Subsidiaries, the consolidating entries for each of such types of Subsidiaries;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate in a form reasonably acceptable to Administrative Agent signed by a Responsible Officer of the Borrower certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto;

(d) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any Subsidiary with the SEC, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed by the Borrower to its shareholders generally, as the case may be; provided, however that this clause (d) shall be deemed satisfied by the filing with the SEC of the documentation required within the time periods specified in the applicable rules and regulations of the SEC;

(e) as soon as available, the Reserve Report required pursuant to Section 5.11 together with a certificate in a form reasonably acceptable to Administrative Agent signed by a Responsible Officer of the Borrower certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto;

(f) together with the Reserve Report required under clause (e) above, a report, in reasonable detail, setting forth the Commodity Agreements then in effect, the notional volumes of and prices for, on a monthly basis and in the aggregate, the Crude Oil and Natural Gas for each such Commodity Agreement and the term of each such Commodity Agreement;

(g) if requested by the Administrative Agent (acting at the written direction of the Majority Lenders) and within thirty (30) days of such request, a monthly report, in form and substance satisfactory to the Administrative Agent, indicating the next preceding month's sales volumes, sales revenues, production taxes, operating expenses and net operating income from the Oil and Gas Properties, with detail, calculations and worksheets, all in form and substance reasonably satisfactory to the Administrative Agent;

(h) prompt written notice (and in any event within thirty (30) days prior thereto) of any change (1) in any Credit Party's corporate, partnership or limited liability company name or status, (2) in the location of any Credit Party's chief executive office or principal place of business, (3) in any Credit Party's corporate structure, (4) in any Credit Party's jurisdiction of organization or such Person's organizational identification number in such jurisdiction of organization, and (5) in any Credit Party's federal taxpayer identification number;

(i) promptly, but in any event within five (5) Business Days after the execution thereof, copies of any amendment, modification or supplement to the certificate or articles of incorporation, by-laws, any preferred stock designation or any other Organizational Document of any Credit Party;

(j) [*Reserved*];

(k) promptly, but in any event within five (5) Business Days after the designation thereof, any designation of any Subsidiary as an Unrestricted Subsidiary by the Board of Directors of the Borrower; and

(l) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of any Credit Party, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request.

Section 5.02 Lender Conference Calls. Concurrently with the distribution of the financial statements required under Sections 5.01(a) and (b), notice of the date and time of a conference call with Lenders to discuss such financial information, which conference calls the Borrower shall host not later than 10 Business Days after such distribution (provided that any conference call hosted by the Borrower which is generally available to holders of its debt or equity securities shall satisfy this covenant).

Section 5.03 Notices of Material Events. The Borrower will furnish to the Administrative Agent and each Lender prompt written notice of the following:

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

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting any Credit Party or any Affiliate thereof that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and the Restricted Subsidiaries in an aggregate amount exceeding $6,000,000;

(d) any written notice or written claim to the effect that any Credit Party is or may be liable to any Person as a result of the release by any Credit Party, or any other Person of any Hazardous Materials into the environment, which could reasonably be expected to have a Material Adverse Effect;

(e) any written notice alleging any violation of any Environmental Law by any Credit Party, which could reasonably be expected to have a Material Adverse Effect;

(f) the occurrence of any material breach or default under, or repudiation or termination of, any Material Sales Contract that results in, or could reasonably be expected to result in, a Material Adverse Effect;

(g) the receipt by the Borrower or any Restricted Subsidiary of any management letter or comparable analysis prepared by the auditors for the Borrower or any such Restricted Subsidiary;

(h) promptly, and in any event within two (2) Business Days after receiving notice thereof or a Responsible Officer becoming aware of, the occurrence of any material breach or default under, or repudiation or termination of, or notice of any material dispute or claim arising under or in connection with the BG JV Documents and the Marcellus JV Documents by any party thereto, including any Default Notice under and as defined in Section 5.1 of the BG Joint Development Agreement and Section 5.1 of the Marcellus Joint Development Agreement;

(i) promptly, and in any event within two (2) Business Days after receiving notice thereof or a Responsible Officer becoming aware of, the occurrence of any default or event of default under the First Lien RBL Documents, the indenture or any similar documents related to the Existing Unsecured Notes or under any Senior Priority Lien Documents, Priority Lien Documents, Junior Priority Lien Documents or Junior Lien Documents; and

(j) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Responsible Officer or other executive officer of the Borrower 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 5.04 Existence; Conduct of Business. The Borrower will, and will cause each Restricted Subsidiary to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution that is otherwise permitted under this Agreement.

Section 5.05 Payment of Obligations. The Borrower will, and will cause each Restricted Subsidiary to, pay its obligations, including Tax liabilities, that, if not paid, could result in a Material Adverse Effect 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 Restricted 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 5.06 Insurance. The Borrower will, and will cause each Restricted Subsidiary and use commercially reasonable efforts to cause each operator of Oil and Gas Properties to, maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. On or prior to the Effective Date and thereafter, upon request of the Administrative Agent, the Borrower will furnish or cause to be furnished to the Administrative Agent from time to time a summary of the respective insurance coverage of the Borrower and its Restricted Subsidiaries in form and substance reasonably satisfactory to the Administrative Agent, and, if requested, will furnish the

Administrative Agent copies of the applicable policies. Upon demand by Administrative Agent (acting at the written direction of the Majority Lenders), the Borrower will cause any insurance policies covering any such property to be endorsed (a) to provide that such policies may not be cancelled, reduced or affected in any manner for any reason without fifteen (15) days prior notice to Administrative Agent, (b) to include the Administrative Agent as loss payee with respect to all property/casualty policies and additional insured with respect to all liability policies and (c) to provide for such other matters as the Administrative Agent or the Lenders may reasonably require.

Section 5.07 Operation and Maintenance of Properties. The Borrower will, and will cause each of its Restricted Subsidiaries to:

(a) operate its Oil and Gas Properties and other material Properties or cause such Oil and Gas Properties and other material Properties to be operated in a careful and efficient manner in accordance with the practices of the industry and in compliance with all applicable contracts and agreements and in compliance with all Governmental Requirements, including, without limitation, applicable pro ration requirements and Environmental Laws, and all applicable laws, rules and regulations of every other Governmental Authority from time to time constituted to regulate the development and operation of its Oil and Gas Properties and the production and sale of Hydrocarbons and other minerals therefrom, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(b) keep and maintain all Property material to the conduct of its business in good working order and condition (ordinary wear and tear excepted); preserve, maintain and keep in good repair, working order and efficiency (ordinary wear and tear and obsolescence excepted) all of its material Oil and Gas Properties and other material Properties, including, without limitation, all equipment, machinery and facilities;

(c) promptly pay and discharge, or make reasonable and customary efforts to cause to be paid and discharged, all delay rentals, royalties, expenses and indebtedness accruing under the leases or other agreements affecting or pertaining to its Oil and Gas Properties and will do all other things necessary to keep materially unimpaired its rights with respect thereto and prevent any forfeiture thereof or default thereunder, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(d) promptly perform, or make reasonable and customary efforts to cause to be performed, in accordance with industry standards, the obligations required by each and all of the assignments, deeds, leases, sub-leases, contracts and agreements affecting its interests in its Oil and Gas Properties and other material Properties, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(e) operate its Oil and Gas Properties and other material Properties or cause or make reasonable and customary efforts to cause such Oil and Gas Properties and other material Properties to be operated in accordance with the practices of the industry and in

material compliance with all applicable contracts and agreements and in compliance in all material respects with all Governmental Requirements; and to the extent that a Credit Party is not the operator of any Property, the Borrower shall use commercially reasonable efforts to cause the operator to comply with this Section 5.07.

Section 5.08 Books and Records; Inspection Rights. The Borrower will, and will cause each Restricted Subsidiary to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Borrower will, and will cause each Restricted Subsidiary to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and, provided an officer of the Borrower has the reasonable opportunity to participate, its independent accountants, all at such reasonable times and as often as reasonably requested.

Section 5.09 Compliance with Laws. The Borrower will, and will cause each Restricted Subsidiary to, comply with all Governmental Requirements applicable to it, its Oil and Gas Business and its Property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 5.10 Use of Proceeds.

(a) The proceeds of the Tranche A Term Loans will be used as provided for in Section 2.01(b).

(b) No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

Section 5.11 Reserve Reports.

(a) On or before March 15th of each year, commencing on March 15, 2018, the Borrower shall furnish to the Administrative Agent and the Lenders a Reserve Report, which Reserve Report shall be prepared or audited by one or more Approved Petroleum Engineers.

(b) With the delivery of each Reserve Report, the Borrower shall provide to the Administrative Agent and the Lenders a certificate from a Responsible Officer certifying that to his knowledge, after reasonable investigation, in all material respects: (1) the information contained in the Reserve Report and any other information delivered in connection therewith is based on information that was prepared in good faith based upon assumptions believed to be reasonable at the time, (2) the Borrower or its Subsidiaries owns good and defensible title to the Proved Reserves evaluated in such Reserve Report and such Proved Reserves are free of all Liens except for Liens permitted by Section 6.07, (3) except as set forth on an exhibit to the certificate, on a net basis there are no material gas imbalances, take or pay or other prepayments with respect to its Oil and Gas Properties evaluated in such Reserve Report which would require the Borrower or any Restricted Subsidiary to deliver Hydrocarbons either generally or produced from such Oil and Gas Properties at some future time without then or thereafter receiving full payment therefor, (4) none of the Borrower's and its Subsidiaries' Proved Reserves have been

sold since the date of the last Reserve Report except as set forth on an exhibit to the certificate, which certificate shall list all of its Proved Reserves sold and in such detail as reasonably required by the Administrative Agent and (5) attached thereto is a schedule of the Proved Reserves evaluated by such Reserve Report that are Mortgaged Properties.

(c) On or before March 15th of each year, commencing on March 15, 2018, the Borrowers shall furnish to the Administrative Agent and the Lenders a Collateral Coverage Reserve Report.

Section 5.12 Liens on Collateral and Additional Property.

(a) The Borrower and each of the Guarantors shall do or cause to be done all acts and things that may be required to assure and confirm that the Collateral Trustee holds, for the benefit of the holders of Junior Priority Lien Obligations, duly created and enforceable and perfected first-priority Liens upon the Collateral (subject to the Intercreditor Agreement and Permitted Prior Liens) (including any acquired Property or other Property required by any Junior Priority Lien Document to become Collateral after the Effective Date), in each case, as contemplated by, and with the Lien priority required under, the Junior Priority Lien Documents, and in connection with any merger, consolidation or sale of assets of the Borrower or any Guarantor, the property and assets of the Person which is consolidated or merged with or into any Borrower or any Guarantor, to the extent that they are property or assets of the types which would constitute Collateral under the Security Instruments, shall be treated as after-acquired property and the Borrower or such Guarantor shall take such action as may be reasonably necessary to cause such property and assets to be made subject to the Junior Priority Liens, in the manner and to the extent required under the Junior Priority Lien Documents.

(b) Upon the request of the Collateral Trustee or any Junior Priority Lien Representative at any time and from time to time, the Borrower and each of the Guarantors shall promptly execute, acknowledge and deliver such Security Instruments, instruments, certificates, financing statements, notices and other documents, and take such other actions as shall be required, or that the Collateral Trustee may reasonably request, to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred, in each case as contemplated by the Junior Priority Lien Documents for the benefit of the holders of Junior Priority Lien Obligations; provided that no such Security Instrument, instrument or other document shall be materially more burdensome upon the Borrower and the Guarantors than the Junior Priority Lien Documents executed and delivered by the Borrower and the Guarantors in connection with the making of the Loans on the Effective Date.

(c) From and after the Effective Date, if the Borrower or any Guarantor acquires any Property that constitutes (x) Collateral or (y) collateral for the Senior Priority Lien Debt, Priority Lien Debt or Junior Lien Debt, if and to the extent that any Priority Lien Document, Senior Priority Lien Document, Junior Priority Lien Document or Junior Lien Document, as applicable, requires any supplemental security document for such collateral or other actions to achieve a perfected Lien on such collateral, the Borrower shall, or shall cause the applicable Guarantor to, promptly (but not in any event no later than the date that is ten (10) Business Days after which such supplemental security documents are executed and delivered (or other action taken) under such Priority Lien Document, Senior Priority Lien Document, Junior

Priority Lien Document or Junior Lien Documents, as applicable), to the extent permitted by applicable law, execute and deliver to the Collateral Trustee appropriate Security Instruments (or amendments thereto) in such form as shall be necessary to grant the Collateral Trustee a valid and enforceable perfected first-priority Lien (subject to the Intercreditor Agreement and to Permitted Prior Liens) on such Collateral or take such other actions in favor of the Collateral Trustee as shall be reasonably necessary to grant a valid and enforceable perfected first-priority Lien (subject to the Intercreditor Agreement and to Permitted Prior Liens) on such Collateral to the Collateral Trustee, for the benefit of the Secured Parties and holders of any other Junior Priority Lien Obligations, subject to the terms of this Agreement, the Intercreditor Agreement, the Collateral Trust Agreement and the other Loan Documents. Additionally, subject to this Agreement, the Intercreditor Agreement, the Collateral Trust Agreement and the other Loan Documents, if the Borrower or any Guarantor creates any additional Lien upon any Property that would constitute Collateral, or takes any additional actions to perfect any existing Lien on Collateral, in each case for the benefit of the holders of the Senior Priority Lien Debt, the holders of the Junior Priority Lien Debt, or the holders of Junior Priority Lien Debt, after the Effective Date, the Borrower or such Guarantor, as applicable, must, to the extent permitted by applicable law, within ten (10) Business Days after such Lien is granted or other action taken, grant a valid and enforceable perfected first-priority Lien (subject to the Intercreditor Agreement and to Permitted Prior Liens) upon such Property, or take such additional perfection actions, as applicable, for the benefit of the Secured Parties and obtain all related deliverables as those delivered to the Senior Priority Lien Representative, the Junior Priority Lien Representative or Junior Lien Representative, as applicable, in each case as security for the Obligations. Notwithstanding the foregoing, to the extent that any Lien on any Collateral is perfected by the possession or control of such Collateral or of any account in which such Collateral is held, and if such Collateral or any such account is in fact in the possession or under the control of the Senior Priority Lien Representative, or of agents or bailees of the Senior Priority Lien Representative, the perfection actions and related deliverables described in this Section 5.12(c) shall not be required with respect to such Collateral.

(d) The Borrower will deliver to the Administrative Agent semi-annually on or before March 20 and September 20 in each calendar year, an Officers' Certificate certifying that, as of the date of such certificate, the Collateral includes Oil and Gas Properties that include not less than (i) 95% of the PV-10 of Proved Reserves, (ii) 95% of the PV-10 of Unproved Reserves and (iii) 95% of the value of net undeveloped acres, in each case attributable to the Oil and Gas Properties of the Borrower and the Guarantors, as evaluated in the most recent Collateral Coverage Reserve Report after giving effect to exploration and production activities, acquisitions, dispositions and production since the date of such Collateral Coverage Reserve Report (the "Minimum Mortgaged Value"). In the event that the Collateral does not represent at least 95% of such value, then the Borrower shall, or shall cause the applicable Guarantor to, within 30 days of delivery of the certificate required under this Section 5.12(d), execute and deliver to the Collateral Trustee: (1) such executed Mortgages or amendments or supplements to prior Mortgages naming the Collateral Trustee, as mortgagee or beneficiary, as may be necessary to cause the minimum mortgage requirement to be satisfied, (2) satisfactory evidence of the completion of all recordings and filings of such Mortgages, amendments or supplements in the proper recorders' offices or appropriate public records (and payment of any taxes or fees in connection therewith) and (3) local counsel opinion or opinions (each, subject to customary assumptions and qualifications) to the effect that the Collateral Trustee has a valid and perfected

first-priority Lien (subject to the Intercreditor Agreement and to Permitted Prior Liens) with respect to the real property that is subject to the applicable Mortgage; provided that, to the extent (i) corresponding mortgages securing the Senior Priority Lien Obligations are being delivered and (ii) Mortgages have previously been recorded in the public records of the state applicable to such additional Mortgages or amendments or supplements to prior Mortgages, no such opinion shall be required unless a corresponding opinion will be delivered to the Senior Priority Lien Collateral Agent.

Section 5.13 Title Data.

(a) Within thirty (30) days (or such longer time period as acceptable to the Administrative Agent (acting at the written direction of the Majority Lenders)) after the delivery to the Administrative Agent and the Lenders of the Collateral Coverage Reserve Report required by Section 5.11, the Borrower will deliver title information in form and substance acceptable to the Majority Lenders covering enough of the Oil and Gas Properties evaluated by such Collateral Coverage Reserve Report that were not included in the immediately preceding Collateral Coverage Reserve Report so that the Administrative Agent and the Lenders shall have received, together with title information previously delivered to the Administrative Agent and the Lenders, satisfactory title information on at least 95% of the Minimum Mortgaged Value of the Oil and Gas Properties evaluated by such Collateral Coverage Reserve Report.

(b) If title information for additional Properties has been provided under Section 5.13(a), the Borrower shall, within sixty (60) days of notice from the Administrative Agent that title defects or exceptions exist with respect to such additional Properties that are not permitted by Section 6.07, either (1) cure any such title defects or exceptions (including defects or exceptions as to priority), (2) substitute acceptable Mortgaged Properties with no title defects or exceptions (other than Liens which are permitted by Section 6.07) having an equivalent value or (3) deliver title information in form and substance reasonably acceptable to the Administrative Agent so that the Administrative Agent shall have received, together with title information previously delivered to the Administrative Agent, satisfactory title information on at least 95% of the Minimum Mortgaged Value of the Oil and Gas Properties evaluated by such Collateral Coverage Reserve Report.

Section 5.14 Additional Guarantors. If the Borrower or any of its Restricted Subsidiaries (x) acquires or creates any wholly-owned Domestic Subsidiary (other than an Unrestricted Subsidiary) (y) acquires or creates a Restricted Subsidiary after the Effective Date and, for purposes of this clause (y), that Subsidiary (a) guarantees any Indebtedness of the Borrower or any Guarantor under any Credit Facility or (b) is a Domestic Subsidiary and becomes an obligor with respect to any Indebtedness under any Credit Facility, then, in the case of either of the foregoing clauses (x) or (y), within 10 Business Days after the date that Subsidiary was acquired or created or on which it became obligated with respect to such Indebtedness the Borrower: (1) will cause that Subsidiary to become a Guarantor and a party to this Agreement and Guarantee the Obligations by executing and delivering to the Administrative Agent a Counterpart Agreement in the form of Exhibit C, (2) will deliver to the Collateral Trustee stock certificates or other instruments representing all the Equity Interests of such Restricted Subsidiary and stock powers and instruments of transfer, endorsed in blank, with respect to such stock certificates or other instruments, or, if any Equity Interests pledged

pursuant to such Security Instrument are uncertificated securities, confirmation and evidence satisfactory to the Majority Lenders that the security interest in such uncertificated securities has been transferred to and perfected by the Administrative Agent in accordance with the Uniform Commercial Code, (3) will deliver to the Collateral Trustee all agreements, deeds of trust, mortgages, documents and instruments, including Uniform Commercial Code Financing Statements (Form UCC-1), required by law or reasonably requested by the Administrative Agent (acting at the written direction of the Majority Lenders) to be executed, filed, registered or recorded to create or perfect the Liens on the Property of such Subsidiary (except to the extent not required under the applicable Security Instrument), (4) will deliver to the Administrative Agent Uniform Commercial Code searches, all dated reasonably close to the date of the joinder agreement and in form and substance satisfactory to the Majority Lenders, and evidence reasonably satisfactory to the Majority Lenders that any Liens indicated in such Uniform Commercial Code searches are Liens permitted pursuant to Section 6.07 or have been released, (5) will deliver to the Administrative Agent the corporate resolutions or similar approval documents of such Restricted Subsidiary approving the execution and delivery of the joinder agreement and the performance by such Restricted Subsidiary of the Security Instruments, the Guaranty and any other Loan Document to which it is a party and (6) will deliver to the Administrative Agent a legal opinion reasonably acceptable to the Administrative Agent and the Majority Lenders, opining favorably on the execution, delivery and enforceability of the Loan Documents to which such Restricted Subsidiary is a party, and the grant and perfection of the security interest or trust lien purported to be made or effected by any such Loan Document and otherwise being in form and substance reasonably satisfactory to the Administrative Agent and the Majority Lenders. For the avoidance of doubt, the Borrower shall cause any Subsidiary which Guarantees obligations under any Senior Priority Lien Document to contemporaneously become a Guarantor hereunder. Each Credit Party expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Credit Party hereunder. This Agreement shall be fully effective as to any Credit Party that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Credit Party hereunder.

Section 5.15 Deposit Accounts. On or within thirty (30) days following the date hereof (or such longer time as acceptable to the Administrative Agent (acting at the written direction of the Majority Lenders)), each Credit Party shall, to the extent not prohibited by a Governmental Authority, cause each deposit account established or maintained for the benefit of such Credit Party, other than Excluded Accounts, at all times to be subject to a Deposit Account Control Agreement among such Credit Party, the First Lien RBL Agent and the Collateral Trustee, and cause all revenue derived by any such Credit Party and all distributions and dividends on any Equity Interests owned by any such Credit Party to be paid and deposited into deposit accounts.

Section 5.16 Credit Ratings. Borrower shall use commercially reasonable efforts to maintain a corporate and a credit facility credit rating for the Term Loans (but not a specific credit rating).

Section 5.17 Further Assurances.

(a) Each Credit Party at its sole expense will, and will cause each of its Restricted Subsidiaries to, promptly execute and deliver to the Administrative Agent or the Collateral Trustee, as applicable, all such other documents, agreements and instruments reasonably requested by the Administrative Agent or the Collateral Trustee (acting at the written direction of the Majority Lenders) to comply with, cure any defects or accomplish the conditions precedent, covenants and agreements of the Borrower or any other Credit Party, as the case may be, in the Loan Documents, including the Notes, or to further evidence and more fully describe the Collateral intended as security for the Obligations, or to correct any omissions in this Agreement or the Security Instruments, or to state more fully the obligations secured therein, or to perfect, protect or preserve any Liens created pursuant to this Agreement or any of the Security Instruments or the priority thereof, or to make any recordings, file any notices or obtain any consents, all as may be reasonably necessary or appropriate, in the reasonable discretion of the Administrative Agent or the Collateral Trustee, as applicable (acting at the written direction of the Majority Lenders), in connection therewith.

(b) Each Credit Party hereby authorizes the Collateral Trustee to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of such Credit Party or any other Credit Party where permitted by law. A carbon, photographic or other reproduction of the Security Instruments or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law. Each Credit Party acknowledges and agrees that any such financing statement may describe the collateral as "all assets" of the applicable Credit Party or words of similar effect as may be required by the Collateral Trustee.

Section 5.18 Post-Closing Matters. The Borrower will (a) deliver or cause to be delivered to the Administrative Agent each of the agreements, documents, instruments or certificates described on Schedule 5.18, all in form and substance reasonably satisfactory to Administrative Agent and the Majority Lenders; (b) perform each of the actions described on Schedule 5.18 in a manner reasonably satisfactory to the Administrative Agent and the Majority Lenders, and (c) cause all such matters described in clauses (a) and (b) to be completed within the time periods set forth opposite each such item or action on such Schedule 5.18 (in each case, unless otherwise agreed to by the Administrative Agent (acting at the written direction of the Majority Lenders)).

ARTICLE VI

NEGATIVE COVENANTS

Until the Commitments have expired or terminated and the principal of and interest and premium on each Loan and all fees payable hereunder have been paid in full, each Credit Party covenants and agrees with the Lenders that:

Section 6.01 Limitation on Indebtedness.

(a) The Borrower shall not, and shall not permit any Restricted Subsidiary to, Incur, directly or indirectly, any Indebtedness, and the Borrower will not issue any shares of Disqualified Stock and will not permit any Restricted Subsidiary to issue any shares of

Disqualified Stock or Preferred Stock; provided, however, that the Borrower shall be entitled to Incur Indebtedness and issue shares of Disqualified Stock, and any Guarantor may incur Indebtedness, issue shares of Disqualified Stock and issue shares of Preferred Stock to the extent permitted pursuant to Section 6.01(b).

(b) Section 6.01(a) will not prohibit the Incurrence of any of the following items of Indebtedness (collectively, "Permitted Indebtedness"):

(1) the Incurrence of Senior Priority Lien Debt by the Borrower or any Guarantor, including Senior Priority Lien Debt consisting of Refinancing Indebtedness Incurred to refinance, refund or replace any such Indebtedness, in each case, to the extent subject to and not prohibited by the Intercreditor Agreement; provided that immediately after giving effect to such Incurrence (and the application of proceeds therefrom) the aggregate amount of all such Indebtedness Incurred under this clause (1) and then outstanding (with outstanding letters of credit being deemed to have a principal amount equal to the stated amount thereof), when combined with the aggregate amount of all other Senior Priority Lien Obligations then outstanding, does not exceed $200,000,000;

(2) the Incurrence by the Borrower and the Guarantors of (x) the Indebtedness represented by the Senior Secured Notes and any Guarantee thereof Incurred on the Effective Date or any PIK Notes, and (y) to the extent subject to and not prohibited by the Intercreditor Agreement, other Priority Lien Debt, including Priority Lien Debt consisting of Refinancing Indebtedness Incurred to refinance, refund or replace Indebtedness Incurred pursuant to this clause (2), in an aggregate amount outstanding (with outstanding letters of credit being deemed to have a principal amount equal to the stated amount thereof) under this clause (2) not to exceed $360,000,000 plus the aggregate principal amount of any PIK Notes (as defined in the Senior Secured Notes Indenture) issued from time to time in respect of any PIK Interest (as defined in the Senior Secured Notes Indenture) in accordance with the terms of the Senior Secured Notes Indenture;

(3) the Incurrence by the Borrower or any Guarantor of (x) Junior Priority Lien Debt represented by the Term Loans and other Obligations Incurred on the Effective Date and, to the extent subject to and not prohibited by the Intercreditor Agreement, Junior Priority Lien Debt consisting of Refinancing Indebtedness Incurred to refinance, refund or replace Indebtedness Incurred pursuant to this clause (x), (y) Junior Lien Debt represented by the Junior Lien Credit Agreement in an aggregate principal amount not to exceed $17,250,000 less the aggregate amount of principal payments made in respect thereof after the Effective Date and, to the extent subject to and not prohibited by the Intercreditor Agreement or the Collateral Trust Agreement, Junior Lien Debt consisting of Refinancing Indebtedness Incurred to refinance, refund or replace Indebtedness Incurred pursuant to the immediately preceding clause (x) or this clause (y) and (z) Junior Lien Debt, to the extent subject to and not prohibited by the Intercreditor Agreement or the Collateral Trust Agreement, or Senior Debt, in each case, consisting of Refinancing Indebtedness Incurred to refinance the Existing Unsecured Notes;

(4) Indebtedness of the Borrower owing to and held by any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary owing to and held by the Borrower or any other Restricted Subsidiary; provided, that (i) any subsequent issuance or transfer of any Equity Interests which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of such Indebtedness (other than to the Borrower or a Restricted Subsidiary) shall be deemed, in each case, to constitute the Incurrence of such Indebtedness by the obligor thereon not permitted by this clause (4), (ii) if a non-Credit Party is the obligor with respect to such Indebtedness and a Credit Party is the obligee, such Indebtedness shall be subject to the limitation set forth in clause (a)(iv) of the definition of "Permitted Investment" and (iii) if the Borrower or a Guarantor is the obligor on such Indebtedness, such Indebtedness shall be expressly subordinated to the prior payment in full in cash of all Obligations of such obligor pursuant to a subordinated intercompany note in form and substance reasonably satisfactory to the Administrative Agent;

(5) Indebtedness (other than the Indebtedness Incurred pursuant to Sections 6.01(b)(1), (2) and (3)) outstanding on the Effective Date and set forth in Schedule 6.01;

(6) Permitted Acquisition Indebtedness;

(7) Refinancing Indebtedness in respect of Indebtedness Incurred pursuant to clauses (5), (6) or (12) of this Section 6.01(b) or this clause (7); provided, that to the extent such Refinancing Indebtedness directly or indirectly Refinances Indebtedness of a Subsidiary Incurred pursuant to clause (6), such Refinancing Indebtedness shall be Incurred only by such Subsidiary;

(8) Hedging Obligations of the Borrower or any Restricted Subsidiary pursuant to contracts entered into in the ordinary course of business for the purpose of limiting risks that arise in the ordinary course of business of the Borrower and its Restricted Subsidiaries;

(9) the Incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, payment obligations in connection with health or other types of social security benefits, unemployment or other insurance or self-insurance obligations, reclamation, statutory obligations, banks' acceptances and obligations in respect of performance, bid and surety bonds and completion guarantees provided by the Borrower or any Restricted Subsidiary in the ordinary course of business;

(10) Indebtedness of the Borrower or any Restricted Subsidiary (i) arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business and (ii) pursuant to Cash Management Obligations Incurred in the ordinary course of business;

(11) Non-Recourse Purchase Money Indebtedness at any time outstanding not to exceed $30,000,000;

(12) any Guarantee by the Borrower or a Credit Party of Indebtedness or other obligations of any Credit Party so long as the Incurrence of such Indebtedness incurred by such Credit Party is permitted to be incurred under this covenant, or any Guarantee by a Credit Party of Indebtedness of the Borrower so long as the Incurrence of such Indebtedness by the Borrower is permitted under this covenant;

(13) in-kind obligations relating to net oil or natural gas balancing positions arising in the ordinary course of business

(14) Indebtedness of the Borrower or any Restricted Subsidiary represented by Capital Lease Obligations, mortgage financings or purchase money obligations Incurred to finance all or any part of the design, development, installation, construction, purchase or lease of, or repairs, improvements or additions to, property, plant or equipment used in the business of the Borrower or any of its Restricted Subsidiaries not more than one hundred and eighty (180) days after the later of the acquisition, completion of construction, repair, improvement, addition or commencement of full operation of such property, plant or equipment, in an aggregate principal amount which, in an aggregate principal amount outstanding, taken together with all Refinancing Indebtedness in respect thereof, not to exceed at any time outstanding $24,000,000;

(15) Permitted Marketing Obligations;

(16) Indebtedness of the Borrower or any Restricted Subsidiary consisting of the financing of insurance premiums in customary amounts consistent with the operations and business of the Borrower and the Restricted Subsidiaries;

(17) Guarantees by the Borrower of the obligations of EOC to pay the BG Development Costs under Section 2.3 of the BG Joint Development Agreement with respect to Oil and Gas Properties owned by the Borrower or the Guarantors or any of the Borrower's Unrestricted Subsidiaries;

(18) Guarantees by the Borrower of the obligations of certain of its Subsidiaries to pay such Subsidiaries' share of the Marcellus Development Costs with respect to the Marcellus JV Oil and Gas Assets in accordance with the terms of the Marcellus JV Documents;

(19) Indebtedness arising from agreements of the Borrower or a Restricted Subsidiary providing for indemnification, adjustment of purchase price or similar obligations, in each case, Incurred or assumed in connection with the disposition of any business or assets of the Borrower or any business, assets or Capital Stock of a Restricted Subsidiary, other than Guarantees of Indebtedness Incurred by any Person

acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition; provided that:

(i) the maximum aggregate liability in respect of all such Indebtedness shall at no time exceed the gross proceeds, including non-cash proceeds (the Fair Market Value of such non-cash proceeds being measured at the time received and without giving effect to subsequent changes in value), actually received by the Borrower and its Restricted Subsidiaries in connection with such disposition; and

(ii) such Indebtedness is not reflected on the balance sheet of the Borrower or any of its Restricted Subsidiaries (contingent obligations referred to in a footnote to financial statements and not otherwise reflected on the balance sheet will not be deemed to be reflected on such balance sheet for purposes of this clause (19)); and

(20) Indebtedness of, or Disqualified Stock issued by, the Borrower or any Restricted Subsidiary or Preferred Stock issued by any Restricted Subsidiary not otherwise permitted pursuant to this clause (b), in an aggregate principal amount not to exceed at any time outstanding $24,000,000;

(21) Indebtedness arising from Guarantees by the Borrower or any Restricted Subsidiary of Indebtedness incurred in connection with Permitted Business Investments at any time outstanding not to exceed $72,000,000.

(c) Notwithstanding the foregoing, neither the Borrower nor any Guarantor shall Incur any Indebtedness pursuant to Section 6.01(b) if the proceeds thereof are used, directly or indirectly, to Refinance any Subordinated Indebtedness of the Borrower or a Guarantor unless such Indebtedness shall be subordinated to the Indebtedness or to the applicable Guarantee to at least the same extent as such Subordinated Indebtedness.

(d) For purposes of determining compliance with this Section 6.01: (1) all Indebtedness outstanding under the First Lien RBL Credit Agreement or under any Replacement Credit Facility shall be deemed Incurred under Section 6.01(b)(1); (2) in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the types of Indebtedness described above, the Borrower, in its sole discretion, shall classify such item of Indebtedness (or any portion thereof) at the time of Incurrence and may later reclassify such item of Indebtedness in any manner that complies with this Section 6.01 and shall only be required to include the amount and type of such Indebtedness in one of the above clauses; (3) at the time of Incurrence, the Borrower shall be entitled to divide and classify (or later classify, reclassify or re-divide in whole or in part in its sole discretion) an item of Indebtedness in more than one of the types of Indebtedness described above; (4) Guarantees of or obligations in respect of letters or credit relating to Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included; (5) if obligations in respect of letters of credit are Incurred pursuant to the First Lien RBL Credit Agreement and are being treated as Incurred pursuant to Section 6.01(b)(1) and the letters of credit relate to other Indebtedness, then such other Indebtedness shall not be included; (6) the amount of Indebtedness issued at a price that is less than the principal amount thereof shall be equal to the amount of the liability in respect thereof determined in accordance with GAAP; and (7) Indebtedness of any Person existing at the time such Person becomes a Restricted Subsidiary shall be deemed to have been Incurred by the Borrower and the Restricted Subsidiary at the time such Person becomes a Restricted Subsidiary.

(e) For purposes of determining compliance with any Dollar-denominated restriction on the Incurrence of Indebtedness where the Indebtedness Incurred is denominated in a different currency, the amount of such Indebtedness shall be the Dollar Equivalent determined on the date of the Incurrence of such Indebtedness; provided, however, that if any such Indebtedness denominated in a different currency is subject to a Currency Agreement with respect to Dollars covering all principal, premium, if any, and interest payable on such Indebtedness, the amount of such Indebtedness expressed in Dollars shall be as provided in such Currency Agreement. The principal amount of any Refinancing Indebtedness Incurred in the same currency as the Indebtedness being Refinanced shall be the Dollar Equivalent of the Indebtedness Refinanced, except to the extent that (1) such Dollar Equivalent was determined based on a Currency Agreement, in which case the Refinancing Indebtedness shall be determined in accordance with the preceding sentence, and (2) the principal amount of the Refinancing Indebtedness exceeds the principal amount of the Indebtedness being Refinanced, in which case the Dollar Equivalent of such excess shall be determined on the date such Refinancing Indebtedness is Incurred.

Section 6.02 Limitation on Restricted Payments.

(a) The Borrower shall not, and shall not permit any Restricted Subsidiary, directly or indirectly, to make a Restricted Payment if at the time the Borrower or such Restricted Subsidiary makes such Restricted Payment:

(1) a Default or Event of Default shall have occurred and be continuing (or would result therefrom);

(2) immediately after giving effect to such Restricted Payment, on a pro forma basis, the Consolidated Coverage Ratio is equal to or less than 2.25 to 1.0; or

(3) the aggregate amount of such Restricted Payment and all other Restricted Payments since the Effective Date (excluding Restricted Payments permitted by clauses (3), (5), (6), (7), (8), (9), (10) and (13), (other than, in the case of such clause (13), Restricted Payments in the form of dividends) of Section 6.02(b)) would exceed the sum of (without duplication):

(i) 100% of the aggregate Net Cash Proceeds and 100% of the fair market value (as determined by the Board of Directors in good faith) of property other than cash received by the Borrower from the issuance or sale of its Capital Stock or of debt securities of the Borrower that have been converted into or exchanged for such Capital Stock (other than Disqualified Stock) subsequent to the Effective Date (other than an issuance or sale to a Subsidiary of the Borrower and other than an issuance or sale financed directly or indirectly with Indebtedness to an employee stock ownership plan or to a trust established by the Borrower or any of its Subsidiaries for the benefit of their employees) and 100% of any cash capital contribution received by the Borrower from its shareholders subsequent to the Effective Date; plus

(ii) the amount by which Indebtedness is reduced on the Borrower's consolidated balance sheet upon the conversion or exchange (other than by a Subsidiary of the Borrower) subsequent to the Effective Date of any Indebtedness convertible or exchangeable for Capital Stock (other than Disqualified Stock) of the Borrower (plus the amount of any accrued interest then outstanding on such Indebtedness to the extent the obligation to pay such interest is extinguished less the amount of any cash, or the fair market value of any other property, distributed by the Borrower upon such conversion or exchange) provided, that the foregoing amount shall not exceed the Net Cash Proceeds received by the Borrower or any Restricted Subsidiary from the sale of such Indebtedness (excluding Net Cash Proceeds from sales to a Subsidiary of the Borrower or, in the case of a sale financed directly or indirectly with Indebtedness, to an employee stock ownership plan or to a trust established by the Borrower or any of its Subsidiaries for the benefit of their employees); plus

(iii) an amount equal to the sum of (A) the net reduction in the Investments (other than Permitted Investments) made subsequent to the Effective Date by the Borrower or any Restricted Subsidiary in any Person resulting from repurchases, repayments or redemptions of such Investments by such Person, proceeds realized on the sale of such Investment and proceeds representing the return of capital (excluding dividends and distributions), in each case received by the Borrower or any Restricted Subsidiary; provided, that such amount shall not exceed the amount of Investments (excluding Permitted Investments) previously made (and treated as a Restricted Payment) by the Borrower or any Restricted Subsidiary in such Person, and (B) to the extent such Person is an Unrestricted Subsidiary, the portion (proportionate to the Borrower's equity interest in such Subsidiary) of the fair market value of the net assets of such Unrestricted Subsidiary at the time such Unrestricted Subsidiary is designated a Restricted Subsidiary or is sold; provided, that (x) such amount shall not exceed, in the case of any Unrestricted Subsidiary other than the Marcellus Midstream Owner, the amount of Investments (excluding Permitted Investments) previously made (and treated as a Restricted Payment) by the Borrower or any Restricted Subsidiary in such Unrestricted Subsidiary and (y) in the case of the Marcellus Midstream Owner, the amount of any Permitted Investments made since the Effective Date by the Borrower or any Restricted Subsidiary in the Marcellus Midstream Owner shall be deducted from such amount; and provided, further, that such amounts under this clause (iii) may not be applied toward Restricted Payments of the types described in clauses (a) and (b) of the definition thereof.

(b) The provisions of Section 6.02(a) shall not prohibit:

(1) the payment of any dividends by the Borrower within 60 days after the date of declaration thereof, if at such date of declaration such dividend would have complied with this Section 6.02 (and such payment shall be deemed to be paid on the date of payment for purposes of any calculation required by this Section 6.02);

(2) any Restricted Payment made out of the Net Cash Proceeds of a substantially concurrent sale (other than to a Subsidiary of the Borrower or an employee stock ownership plan or to a trust established by the Borrower or any of its Subsidiaries for the benefit of their employees) of Capital Stock (other than Disqualified Stock) or a cash capital contribution received by the Borrower from its shareholders; provided, that the Net Cash Proceeds from such sale or such cash capital contribution (to the extent so used for such Restricted Payment) shall be excluded from the calculation of amounts under Section 6.02(a)(3)(i);

(3) the defeasance, redemption, repurchase, retirement or other acquisition of any Subordinated Indebtedness of the Borrower or any Guarantor, Existing Unsecured Notes, Senior Debt, Junior Priority Lien Debt or Junior Lien Debt, in each case with the Net Cash Proceeds from or in exchange for Indebtedness constituting Refinancing Indebtedness permitted to be incurred under Section 6.01 or in exchange for an issuance of Capital Stock of the Borrower (other than Disqualified Stock);

(4) the payment of any dividend or other distribution by a wholly-owned Restricted Subsidiary of the Borrower to the Borrower or another wholly-owned Restricted Subsidiary;

(5) so long as no Default or Event of Default has occurred and is continuing, Restricted Payments to effect the repurchase or other acquisition of shares of Capital Stock of the Borrower or any of its Subsidiaries from employees, former employees, directors or former directors of the Borrower or any of its Subsidiaries (or heirs, estates or other permitted transferees of such employees, former employees, directors or former directors), pursuant to the terms of the agreements (including employment agreements or management equity subscription agreements), stock options or plans (or amendments thereto) approved by the Board of Directors under which such individuals purchase or sell or are granted the option to purchase or sell, shares of such Capital Stock; provided, that the aggregate amount of such repurchases and other acquisitions (excluding amounts representing cancelation of Indebtedness) shall not exceed $2,400,000 in any 12-month period plus any unused amount permitted under this clause (5) for the immediately preceding year, but not to exceed $3,600,000 in any 12-month period;

(6) (i) repurchases, redemptions or other acquisitions of Capital Stock deemed to occur upon exercise of stock options, warrants or other convertible securities if such Capital Stock represents a portion of the exercise or exchange price thereof and (ii) repurchases or other acquisitions of Capital Stock made in lieu of withholding taxes in connection with any such exercise or exchange; provided that the aggregate amount of such repurchases, redemptions or acquisitions to satisfy federal income tax obligations shall not exceed $2,400,000 in any 12-month period;

(7) cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Borrower; provided, that any such cash payment shall not be for the purpose of evading this Section 6.02 (as determined in good faith by the Board of Directors);

(8) payments of intercompany Indebtedness that was permitted to be Incurred under this Agreement; provided, that no Default or Event of Default has occurred and is continuing or would otherwise result therefrom;

(9) payments to dissenting stockholders (i) pursuant to applicable law or (ii) in connection with the settlement or other satisfaction of legal claims made pursuant to or in connection with a consolidation, merger or transfer of assets in connection with a transaction that is not prohibited by this Agreement;

(10) repurchases, redemptions or other acquisitions of value of Existing Unsecured Notes in exchange for Junior Lien Debt to the extent permitted to be incurred under Section 6.01(b)(3) and/or with the Net Cash Proceeds of any such Junior Lien Debt; provided, that no Default or Event of Default has occurred and is continuing or would otherwise result immediately therefrom;

(11) repurchases, exchanges, redemptions or other acquisitions of value of Existing Unsecured Notes for consideration for all such repurchases, exchanges, redemptions or acquisitions not exceeding $84,000,000 in the aggregate since the Issue Date; provided, that no Default or Event of Default has occurred and is continuing or would otherwise result immediately therefrom;

(12) repurchases, exchanges, redemptions or other acquisitions of value of the 2018 Notes for consideration for all such repurchases, exchanges, redemptions or acquisitions not exceeding $25,000,000 in the aggregate since the Effective Date Date; provided, that no Default or Event of Default has occurred and is continuing or would otherwise result immediately therefrom; and

(13) other Restricted Payments not to exceed $30,000,000 in the aggregate; provided, that no Default or Event of Default has occurred and is continuing or would otherwise result immediately therefrom.

(c) For purposes of determining compliance with this Section 6.02, at the time a Restricted Payment is made, the Borrower shall be entitled to divide and classify such Restricted Payment in more than one of the types of Restricted Payments described above. The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred by the Borrower or the applicable Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment. The amount of any Restricted Payment paid in cash shall be equal to its face amount. The fair market value of any assets or securities that are required to be valued at the time of such Restricted Payment by this Section 6.02 shall be evidenced by an Officers' Certificate which shall be delivered to the Administrative Agent not later than ten (10) Business Days following the date of the making of any Restricted Payment. Such certificate shall state that such Restricted Payment is permitted together with a copy of any related resolutions of the Board of Directors.

(d) Notwithstanding anything to the contrary contained herein, the Borrower shall not, and shall not permit any Restricted Subsidiary, directly or indirectly, to (1) repurchase, exchange, redeem or otherwise acquire for value or Refinance any Existing Unsecured Notes in exchange for, or with the Net Cash Proceeds of, any Indebtedness other than (i) Junior Lien Debt in reliance on Section 6.02(b)(3) or (ii) additional unsecured Indebtedness (provided that such unsecured Indebtedness does not mature prior to ninety-one (91) days after the Term Loan Maturity Date) (in the case of each of clauses (i) and (ii), to the extent such Indebtedness is permitted to be incurred under this Agreement) or (iii) with the issuance of Capital Stock of the Issuer (other than Disqualified Stock) or (2) repurchase, exchange, redeem or otherwise acquire for value or Refinance any Junior Priority Lien Debt, Junior Lien Debt or Senior Debt (other than the Existing Unsecured Notes) in exchange for, or with the Net Cash Proceeds of, any Senior Priority Lien Debt or Priority Lien Debt. For the avoidance of doubt, nothing in this clause (d) shall prohibit repurchases of any Existing Unsecured Notes otherwise permitted under this Section 6.02 for cash; provided, however, that any such repurchase shall also comply with Section 6.06 hereof.

Section 6.03 Limitation on Restrictions on Distributions from Restricted Subsidiaries. The Borrower shall not, and shall not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

(a) pay dividends or make any other distributions on its Capital Stock to the Borrower or a Restricted Subsidiary or pay any Indebtedness owed to the Borrower; provided that the priority of any Preferred Stock in receiving dividends or liquidating distributions being paid on Common Stock shall not be deemed a restriction of the ability to make distributions of Capital Stock;

(b) make any loans or advances to the Borrower; provided that the subordination of loans or advances made to the Borrower or any Restricted Subsidiary to other Indebtedness Incurred by the Borrower or any Restricted Subsidiary shall not be deemed a restriction of the ability to make loans or advances; or

(c) transfer any of its Property or assets to the Borrower,

except with respect to clauses (a), (b) and (c) above:

(1) any encumbrance or restriction pursuant to an agreement in effect at or entered into on the Effective Date including, for the avoidance of doubt, the First Lien RBL Credit Agreement, Senior Secured Notes Documents, the Junior Lien Credit Agreement and the Existing Unsecured Notes;

(2) any encumbrance or restriction with respect to a Restricted Subsidiary pursuant to an agreement relating to any Indebtedness Incurred by such Restricted Subsidiary, or otherwise binding on such Restricted Subsidiary,

on or prior to the date on which such Restricted Subsidiary was acquired or was so designated by the Borrower or any Restricted Subsidiary (other than Indebtedness Incurred as consideration in, or to provide all or any portion of the funds or credit support utilized to consummate, and other than any encumbrance or restriction entered into in contemplation of, the transaction or series of related transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was acquired by the Borrower) and outstanding on such date;

(3) any encumbrance or restriction pursuant to an agreement effecting a Refinancing of Indebtedness Incurred pursuant to an agreement referred to in clause (1) or (2) above; provided, that the encumbrances and restrictions with respect to such Restricted Subsidiary contained in any such Refinancing agreement or amendment are no more restrictive than the encumbrances and restrictions with respect to such Restricted Subsidiary contained in such predecessor agreements;

(4) any encumbrance or restriction with respect to a Restricted Subsidiary (or any of its Property or assets) imposed pursuant to an agreement entered into for the sale or disposition of all or substantially all the Capital Stock or assets of such Restricted Subsidiary (or the Property or assets subject to such restrictions) pending the closing of such sale or disposition;

(5) customary encumbrances and restrictions contained in agreements of the type described in the definition of the term "Permitted Business Investments";

(6) any encumbrance or restriction pursuant to an agreement relating to any Capital Lease Obligations or purchase money Indebtedness, in each case not Incurred in violation of this Agreement; provided, that with respect to purchase money Indebtedness or Capital Lease Obligations, such restrictions relate only to the Property financed with such Indebtedness;

(7) any encumbrance or restriction pursuant to provisions in agreements or instruments which prohibit the payment of dividends or the making of other distributions with respect to any Capital Stock of a Person other than on a pro rata basis;

(8) any encumbrance or restriction existing pursuant to applicable law, rule, regulation, order, approval, license, permit or similar restriction;

(9) any encumbrance or restriction pursuant to supermajority voting requirements under corporate charters, bylaws, stockholders agreements and similar documents and agreements; and

(10) any encumbrance or restriction pursuant to an instrument or agreement governing Indebtedness permitted by the terms of this Agreement to be Incurred by a Restricted Subsidiary to fund, in whole or in part, the acquisition of any Property or assets; provided such Indebtedness is repaid or otherwise refinanced in full with Refinancing Indebtedness on or prior to the date twelve (12) months after the date such Indebtedness was initially Incurred; and

and except, with respect to clause (c) only:

(1) any encumbrance or restriction consisting of customary non-assignment provisions (including provisions forbidding subletting) in leases governing leasehold interests or Farm-In Agreements or Farm-Out Agreements to the extent such provisions restrict the transfer of the lease or the Property leased thereunder;

(2) any encumbrance or restriction contained in Capital Lease Obligations, security agreements, mortgages, purchase money agreements or similar instruments securing Indebtedness of a Restricted Subsidiary to the extent such encumbrance or restriction restricts the transfer of the Property (including Capital Stock) subject to such Capital Lease Obligations, security agreements, mortgages, purchase money agreements or similar instruments;

(3) Permitted Liens or Liens securing Indebtedness otherwise permitted to be Incurred pursuant to Section 6.07 that limit the right of the Borrower or any of its Restricted Subsidiaries to dispose of the assets subject to such Lien;

(4) customary restrictions contained in asset sale agreements limiting the transfer of such assets pending the closing of such sale;

(5) customary restrictions on the subletting, assignment or transfer of any Property or asset that is subject to a lease, license, sub-license or similar contract, or the assignment or transfer of any such lease, license, sub-license or other contract;

(6) encumbrances and restrictions contained in contracts entered into in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of, or from the ability of the Borrower and the Restricted Subsidiaries to realize the value of, Property or assets of the Borrower or any Restricted Subsidiary in any manner material to the Borrower or any Restricted Subsidiary; and

(7) any encumbrance or restriction pursuant to provisions with respect to the disposition or distribution of assets or Property in operating agreements, sale-leaseback agreements, joint venture agreements, development agreements, area of mutual interest agreements and other agreements that are customary in the Oil and Gas Business and entered into in the ordinary course of business.

Section 6.04 Fundamental Changes and Dispositions.

(a) The Borrower will not, nor will it permit any of its Restricted Subsidiaries to, merge into or consolidate with any other Person, or permit any other Person to merge into or

consolidate with it, or Dispose of (in one transaction or in a series of transactions, including any Asset Sale) all or any substantial part of its assets, or any of its Oil and Gas Properties or any of the Equity Interests of any Restricted Subsidiary (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except that, the Borrower or any Restricted Subsidiary may sell Hydrocarbons produced from its Oil and Gas Properties in the ordinary course of business, and if at the time thereof and immediately after giving effect thereto no Default or Event of Default shall have occurred and be continuing:

(1) any Restricted Subsidiary may merge into the Borrower in a transaction in which the Borrower is the surviving entity;

(2) (i) any Credit Party may merge into any other Credit Party (provided that, in the case of the Borrower, the Borrower shall be the surviving entity); (ii) any Non-Credit Party Restricted Subsidiary may merge into any other non-Credit Party Restricted Subsidiary and (iii) any non-Credit Party may merge into any Credit Party in a transaction in which the surviving entity is a Credit Party;

(3) any Restricted Subsidiary may sell, transfer, lease or otherwise dispose of its assets to the Borrower or to another Restricted Subsidiary; provided, that the aggregate fair market value of all assets sold, transferred, leased or otherwise disposed of by a Credit Party to a non-Credit Party during the term of this Agreement pursuant to this clause (3) shall not exceed $12,000,000 in the aggregate;

(4) the Borrower may sell, transfer, lease or otherwise dispose of its assets to any Guarantor;

(5) any Restricted Subsidiary 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 such Restricted Subsidiary and is not materially disadvantageous to interests of the Lenders;

(6) the Borrower or any Restricted Subsidiary may sell, transfer, lease or otherwise dispose of equipment and related items in the ordinary course of business, that are obsolete or no longer necessary in the business of the Borrower or any of its Restricted Subsidiaries or that is being replaced by equipment of comparable value and utility;

(7) subject to Section 2.08(a), to the extent permitted under the terms of the First Lien RBL Credit Agreement and the other Senior Priority Lien Documents, the Borrower or any Restricted Subsidiary may Dispose of Oil and Gas Properties (whether pursuant to a Disposition of all, but not less than all, of the Equity Interests of any Restricted Subsidiary or otherwise) so long as:

(i) the Borrower or such Restricted Subsidiary receives consideration (including by way of relief from, or by any Person assuming responsibilities for any liabilities, contingent or otherwise) at the time of such Asset Sale at least equal to the fair market value (including as to the value of all non-cash consideration), as determined in good faith by the

Board of Directors or an executive officer of the Borrower or such Restricted Subsidiary with the responsibility for such transaction, which determination shall be conclusive evidence of compliance with this provision, of the shares and assets subject to such Asset Sale; and

(ii) unless such Disposition is in connection with a joint development arrangement, drilling agreement or similar arrangement contemplating a contribution or conveyance of Oil and Gas Properties in exchange for a commitment to bear future development costs in respect of such Oil and Gas Properties, at least 85% of the consideration thereof received by the Borrower or such Restricted Subsidiary is in the form of cash or Cash Equivalents; provided that the following are deemed to be cash or Cash Equivalents: (i) any liabilities (as shown on the Borrower's or such Restricted Subsidiary's most recent balance sheet) of the Borrower or any Restricted Subsidiary (other than (1) liabilities that are subordinated to the Obligations, (2) Junior Priority Lien Obligations, (3) Junior Lien Obligations or (4) Senior Debt) that are assumed by the transferee of any such assets pursuant to a customary novation agreement or similar agreement that releases the Borrower or such Restricted Subsidiary from all further liability; (ii) securities received by the Borrower or any Restricted Subsidiary from the transferee that are converted within one hundred and eighty (180) days by the Borrower or such Restricted Subsidiary into cash, to the extent of cash received in that conversion; and (iii) accounts receivable of a business retained by the Borrower or any Restricted Subsidiary, as the case may be, following the sale of such business, provided that such accounts receivable (c) are not past due more than thirty (30) days and (y) do not have a payment greater than ninety (90) days from the date of the invoice creating such accounts receivable.

provided, that for purposes of this clause (a)(7), the Credit Parties may not sell, transfer, lease, exchange, abandon or otherwise Dispose of (in one transaction or a series of related transactions) all or substantially all of the Oil and Gas Properties (whether pursuant to a Disposition of Equity Interests of a Restricted Subsidiary or otherwise) without the prior written consent of all of the Lenders.

(8) the Borrower may consummate the following Dispositions:

(i) the sale, transfer or assignment by the Borrower, EXCO PA, EXCO WV or any other Restricted Subsidiary of an undivided interest in Oil and Gas Properties acquired by the Borrower, EXCO PA, EXCO WV or any other Restricted Subsidiary in the Appalachian Area to the extent required pursuant to and in accordance with the right of first refusal provisions of the Marcellus JV Documents; and

(ii) the sale, transfer or assignment by the Borrower, EOC or any other Restricted Subsidiary of an undivided interest in Oil and Gas Properties acquired by the Borrower, EOC or any other Restricted Subsidiary in the East Texas/North Louisiana Area to the extent required pursuant to and in accordance with the right of first refusal provisions of the BG Joint Development Agreement.

(b) The Borrower will not, nor will it permit any of its Restricted Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and its Restricted Subsidiaries on the date of execution of this Agreement and after giving effect to the Transactions and businesses reasonably related thereto.

Section 6.05 Limitation on Affiliate Transactions.

(a) The Borrower will not, nor will it permit any of its Restricted 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 (an "Affiliate Transaction"), (1) except (i) in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower or such Restricted Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (ii) transactions between or among the Borrower and the other Credit Parties not involving any other Affiliate, (iii) any Restricted Payment permitted by Section 6.02 or (iv) Permitted Investments of the kind referred to in clauses (a)(i) and (a)(ii) of the definition thereof; and (2) unless (i) the terms of the Affiliate Transaction are no less favorable to the Borrower or such Restricted Subsidiary than those that could be obtained at the time of the Affiliate Transaction in arm's-length dealings with a Person who is not an Affiliate and if, in the good faith judgment of the Board of Directors, such Affiliate Transaction is commercially reasonable and otherwise fair to the Borrower or the relevant Restricted Subsidiary from a financial point of view; and (ii)(x) the Borrower delivers to the Administrative Agent with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration to or from the Borrower or a Restricted Subsidiary in excess of $12,000,000, an Officers' Certificate certifying that such Affiliate Transaction complies with the requirements of clause (1) above, and (y) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration to or from the Borrower or a Restricted Subsidiary in excess of $30,000,000, a majority of the Disinterested Members of the Board of Directors (or, if there is only one Disinterested Member, such Disinterested Member) have determined that the criteria set forth in clause (1) are satisfied with respect to such Affiliate Transaction(s) and have approved such Affiliate Transaction(s), as evidenced by a resolution delivered to the Administrative Agent and certified by an officers' certificate as having been adopted by the Board of Directors.

(b) Section 6.05(a) shall not prohibit or apply to:

(1) any Investment by a Credit Party in another Credit Party or other Restricted Payment between Credit Parties;

(2) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options and stock ownership plans approved by the Board of Directors;

(3) loans or advances to officers or employees in the ordinary course of business in accordance with the past practices of the Borrower or the Restricted Subsidiaries, in each case, only as permitted by Section 402 of the Sarbanes-Oxley Act of 2002;

(4) the payment of reasonable fees to directors of the Borrower and the Restricted Subsidiaries who are not employees of the Borrower or the Restricted Subsidiaries, the reimbursement of reasonable out-of-pocket expenses incurred by, directors of the Borrower and the Restricted Subsidiaries in attending meetings of such directors and indemnification payments made to officers, directors and employees of the Borrower or any Subsidiary pursuant to charter, bylaw, statutory or contractual provisions;

(5) the issuance or sale of any Capital Stock (other than Disqualified Stock) of the Borrower to, or the receipt by the Borrower of any capital contribution from, its stockholders or Affiliates;

(6) any agreement as in effect on the Effective Date (including each of the agreements in respect of the Transactions) and described on Schedule 6.05 or any amendments or other modifications, renewals or extensions of any such agreement (so long as such amendments or other modifications, renewals or extensions are not materially less favorable to the Borrower or the Restricted Subsidiaries) and the transactions evidenced thereby;

(7) transactions contemplated by the Marcellus JV Documents, the BG JV Documents or the Bluescape Agreement, in each case as in effect on the Effective Date, in the ordinary course of business and otherwise in compliance with the terms of this Agreement, which are fair to the Borrower and its Restricted Subsidiaries in the reasonable determination of the Board of Directors of the Borrower, an executive officer of the Borrower or an executive officer of such Restricted Subsidiary with responsibility for such transaction (whose determination shall be conclusive evidence of compliance with this provision) and amendments, modifications, supplements, extensions or renewals of such agreements from time to time, so long as any such amendment, modification, supplement, extension or renewal is not more disadvantageous to the Lenders in any material respect in the good faith judgment of the Board of Directors of the Borrower, when taken as a whole, than the terms of such agreements in effect on the Effective Date;

(8) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services in each case in the ordinary course of business and otherwise in compliance with this Agreement, which are fair to the Borrower and its Restricted Subsidiaries, in the reasonable determination of the Board of Directors of the Borrower, an executive officer of the Borrower or an executive officer of such Restricted Subsidiary with responsibility for such transaction (whose determination shall be conclusive evidence of compliance with this provision) or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(9) transactions between the Borrower or any Restricted Subsidiary and any Person, a director of which is also a director of the Borrower and such director is the sole cause for such Person to be deemed an Affiliate of the Borrower or any Restricted Subsidiary, provided, however, that such director shall abstain from voting as a director of the Borrower on any matter involving such other Person;

(10) any transaction in which the Borrower or any of its Restricted Subsidiaries as the case may be, delivers to the Administrative Agent a written opinion from an Independent Qualified Party to the effect that such Affiliate Transaction is fair, from a financial standpoint, to the Borrower and the Restricted Subsidiaries or is not less favorable to the Borrower and the Restricted Subsidiaries than could reasonably be expected to be obtained at the time in an arm's-length transaction with a Person who was not an Affiliate;

(11) guarantees of performance by the Borrower and its Restricted Subsidiaries of the Borrower's Unrestricted Subsidiaries in the ordinary course of business, except for guarantees of Indebtedness in respect of borrowed money; or

(12) if such Affiliate Transaction is with a Person in its capacity as a holder of Indebtedness or Capital Stock of the Borrower or any Restricted Subsidiary where such Person is treated no more favorably than the holders of Indebtedness or Capital Stock of the Borrower or any Restricted Subsidiary.

Section 6.06 Prepayment of Junior Lien Credit Agreement. Notwithstanding anything to the contrary herein, the Borrower shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, to make any payment at maturity of the outstanding term loans under the Junior Lien Credit Agreement prior to payment in full at maturity of the Obligations.

Section 6.07 Limitation on Liens. The Borrower shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, Incur or permit to exist any Lien of any nature whatsoever on any of its Properties (including Capital Stock of a Restricted Subsidiary), whether owned at the Effective Date or thereafter acquired, other than Permitted Liens.

Section 6.08 Limitation on Sale/Leaseback Transactions. The Borrower shall not, and shall not permit any Restricted Subsidiary to, enter into any Sale/Leaseback Transaction with respect to any Property unless (a) the Borrower or such Restricted Subsidiary would be entitled to (1) Incur Indebtedness in an amount equal to the Attributable Debt with respect to such Sale/Leaseback Transaction pursuant to Section 6.01 and (2) create a Lien on such Property securing such Attributable Debt; (b) the net proceeds received by the Borrower or any Restricted Subsidiary in connection with such Sale/Leaseback Transaction are at least equal to the fair market value (as determined by the Board of Directors) of such Property and (c) the Borrower applies the proceeds of such transaction in compliance with Sections 2.08 and 6.04.

Section 6.09 Payment of Fees. The Borrower shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Lender or holder of any Junior Priority Lien Debt for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of any Junior Priority Lien Document unless (a) in the case of any consent, waiver or amendment of any

Loan Document, such consideration is offered to be paid and is paid to all Lenders that consent, waive or agree to amend any comparable provisions of the Loan Documents and (b) in the case of any consent, waiver or amendment of any Junior Priority Lien Document (other than any Loan Documents), the Borrower shall also pay such consideration, in the amount and in the same form as that paid to such other lenders or holders of Junior Priority Lien Debt.

ARTICLE VII

GUARANTEE OF OBLIGATIONS

Section 7.01 Guarantee of Payment. Each Guarantor unconditionally and irrevocably guarantees to the Administrative Agent for the benefit of the Secured Parties, the punctual payment of all Obligations now or which may in the future be owing by any Credit Party (the "Guaranteed Liabilities"). This Guarantee is a guaranty of payment and not of collection only. The Administrative Agent shall not be required to exhaust any right or remedy or take any action against the Borrower or any other Person or any collateral. The Guaranteed Liabilities include interest accruing after the commencement of a proceeding under bankruptcy, insolvency or similar laws of any jurisdiction at the rate or rates provided in the Loan Documents, regardless of whether such interest is an allowed claim. Each Guarantor agrees that, as between the Guarantor and the Administrative Agent, the Guaranteed Liabilities may be declared to be due and payable for the purposes of this Guarantee notwithstanding any stay, injunction or other prohibition which may prevent, delay or vitiate any declaration as regards the Borrower or any other Guarantor and that in the event of a declaration or attempted declaration, the Guaranteed Liabilities shall immediately become due and payable by each Guarantor for the purposes of this Guarantee.

Section 7.02 Guarantee Absolute. Each Guarantor guarantees that the Guaranteed Liabilities shall be paid strictly in accordance with the terms of this Agreement The liability of each Guarantor hereunder is absolute and unconditional irrespective of: (a) any change in the time, manner or place of payment of, or in any other term of, all or any of the Loan Documents or the Guaranteed Liabilities, or any other amendment or waiver of or any consent to departure from any of the terms of any Loan Document or Guaranteed Liability, including any increase or decrease in the rate of interest thereon; (b) any release or amendment or waiver of, or consent to departure from, any other guaranty or support document, or any exchange, release or non-perfection of any collateral, for all or any of the Loan Documents or Guaranteed Liabilities; (c) any present or future law, regulation or order of any jurisdiction (whether of right or in fact) or of any agency thereof purporting to reduce, amend, restructure or otherwise affect any term of any Loan Document or Guaranteed Liability; (d) without being limited by the foregoing, any lack of validity or enforceability of any Loan Document or Guaranteed Liability; and (e) any other setoff, defense or counterclaim whatsoever (in any case, whether based on contract, tort or any other theory) with respect to the Loan Documents or the transactions contemplated thereby which might constitute a legal or equitable defense available to, or discharge of, the Borrower or a Guarantor.

Section 7.03 Guarantee Irrevocable. This Guarantee is a continuing guaranty of the payment of all Guaranteed Liabilities now or hereafter existing under this Agreement and shall remain in full force and effect until payment in full of all Guaranteed

Liabilities and other amounts payable hereunder and until this Agreement are no longer in effect or, if earlier, when the Guarantor has given the Administrative Agent written notice that this Guarantee has been revoked; provided that any notice under this Section shall not release the revoking Guarantor from any Guaranteed Liability, absolute or contingent, existing prior to the Administrative Agent's actual receipt of the notice at its branches or departments responsible for this Agreement and reasonable opportunity to act upon such notice.

Section 7.04 Reinstatement. This Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Liabilities is rescinded or must otherwise be returned by any Secured Party on the insolvency, bankruptcy or reorganization of the Borrower, or any other Credit Party, or otherwise, all as though the payment had not been made.

Section 7.05 Subrogation. No Guarantor shall exercise any rights which it may acquire by way of subrogation, by any payment made under this Guarantee or otherwise, until all the Guaranteed Liabilities have been paid in full and this Agreement is no longer in effect. If any amount is paid to the Guarantor on account of subrogation rights under this Guarantee at any time when all the Guaranteed Liabilities have not been paid in full, the amount shall be held in trust for the benefit of the Lenders and shall be promptly paid to the Administrative Agent to be credited and applied to the Guaranteed Liabilities, whether matured or unmatured or absolute or contingent, in accordance with the terms of this Agreement. If any Guarantor makes payment to the Administrative Agent or Lenders of all or any part of the Guaranteed Liabilities and all the Guaranteed Liabilities are paid in full and this Agreement is no longer in effect, the Administrative Agent and Lenders shall, at such Guarantor's request, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Liabilities resulting from the payment.

Section 7.06 Subordination. Without limiting the rights of the Administrative Agent and the Lenders under any other agreement, any liabilities owed by the Borrower to any Guarantor in connection with any extension of credit or financial accommodation by any Guarantor to or for the account of the Borrower, including but not limited to interest accruing at the agreed contract rate after the commencement of a bankruptcy or similar proceeding, are hereby subordinated to the Guaranteed Liabilities, and such liabilities of the Borrower to such Guarantor, if the Administrative Agent so requests, shall be collected, enforced and received by any Guarantor as trustee for the Administrative Agent and shall be paid over to the Administrative Agent on account of the Guaranteed Liabilities but without reducing or affecting in any manner the liability of the Guarantor under the other provisions of this Guarantee.

Section 7.07 Payments Generally. All payments by the Guarantors shall be made in the manner, at the place and in the currency (the "Payment Currency") required by the Loan Documents; provided, however, that (if the Payment Currency is other than Dollars) any Guarantor may, at its option (or, if for any reason whatsoever any Guarantor is unable to effect payments in the foregoing manner, such Guarantor shall be obligated to) pay to the Administrative Agent at its principal office the equivalent amount in Dollars computed at the selling rate of the Administrative Agent or a selling rate chosen by the Administrative Agent,

most recently in effect on or prior to the date the Guaranteed Liability becomes due, for cable transfers of the Payment Currency to the place where the Guaranteed Liability is payable. In any case in which any Guarantor makes or is obligated to make payment in Dollars, the Guarantor shall hold the Administrative Agent and the Lenders harmless from any loss incurred by the Administrative Agent or any Lender arising from any change in the value of Dollars in relation to the Payment Currency between the date the Guaranteed Liability becomes due and the date the Administrative Agent or such Lender is actually able, following the conversion of the Dollars paid by such Guarantor into the Payment Currency and remittance of such Payment Currency to the place where such Guaranteed Liability is payable, to apply such Payment Currency to such Guaranteed Liability.

Section 7.08 Setoff. Each Guarantor agrees that, in addition to (and without limitation of) any right of setoff, banker's lien or counterclaim the Administrative Agent or any Lender may otherwise have, the Administrative Agent or such Lender shall be entitled, at its option, to offset balances (general or special, time or demand, provisional or final) held by it for the account of any Guarantor at any office of the Administrative Agent or such Lender, in Dollars or in any other currency, against any amount payable by such Guarantor under this Guarantee which is not paid when due (regardless of whether such balances are then due to such Guarantor), in which case it shall promptly notify such Guarantor thereof; provided that the failure of the Administrative Agent or such Lender to give such notice shall not affect the validity thereof.

Section 7.09 Formalities. Each Guarantor waives presentment, notice of dishonor, protest, notice of acceptance of this Guarantee or incurrence of any Guaranteed Liability and any other formality with respect to any of the Guaranteed Liabilities or this Guarantee.

Section 7.10 Limitations on Guarantee. The provisions of the Guarantee under this Article VII are severable, and in any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under this Guarantee would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Guarantor's liability under this Guarantee, then, notwithstanding any other provision of this Guarantee to the contrary, the amount of such liability shall, without any further action by the Guarantors, the Administrative Agent or any Lender, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Guarantor's "Maximum Liability"). This Section 7.10, with respect to the Maximum Liability of the Guarantors, is intended solely to preserve the rights of the Administrative Agent and the Lenders hereunder to the maximum extent not subject to avoidance under applicable law, and no Guarantor nor any other Person shall have any right or claim under this Section 7.10 with respect to the Maximum Liability, except to the extent necessary so that none of the obligations of any Guarantor hereunder shall be rendered voidable under applicable law.

ARTICLE VIII

EVENTS OF DEFAULT

If any of the following events ("Events of Default") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan (including any payments required under Section 2.08) when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

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

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Restricted Subsidiary in or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any amendment or modification hereof or waiver hereunder or in any Loan Document furnished pursuant to or in connection with this Agreement or any amendment or modification thereof or waiver hereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) the Borrower or any Restricted Subsidiary shall fail to observe or perform any covenant, condition or agreement contained in Article VI;

(e) the Borrower or any Restricted Subsidiary shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Article) or any Loan Document, and such failure shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of any Lender);

(f) the occurrence of the following:

(1) the Borrower or any Restricted Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable;

(2) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (f) shall not apply to secured Indebtedness (other than the Senior Priority Lien Debt, Priority Lien Debt, Junior Priority Lien Debt and Junior Lien Debt) that

becomes due as a result of the voluntary sale or transfer of the property or assets by the Borrower or any of its Restricted Subsidiaries securing such Indebtedness to the extent such voluntary sale or transfer of property is permitted hereunder;

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (1) liquidation, reorganization or other relief in respect of the Borrower or any Restricted Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (2) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Restricted Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) the Borrower or any Restricted Subsidiary shall (1) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (2) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (g) of this Article, (3) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Restricted Subsidiary or for a substantial part of its assets, (4) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (5) make a general assignment for the benefit of creditors or (6) take any action for the purpose of effecting any of the foregoing;

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

(j) one or more judgments for the payment of money in an aggregate amount in excess of $6,000,000 shall be rendered against the Borrower or any Restricted Subsidiary or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any Restricted Subsidiary to enforce any such judgment;

(k) an ERISA Event shall have occurred that, in the opinion of the Majority Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(l) any Guarantee of a Guarantor shall be held in any judicial proceeding to be unenforceable or invalid or, except as permitted by the Agreement, shall cease for any reason to be in full force and effect or any Guarantor, or any Person acting on behalf of any Guarantor, shall deny or disaffirm its obligations under its Guarantee, in each case with respect to any Guarantor that is also a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary;

(m) the occurrence of the following:

(1) except as permitted by the Loan Documents, any Loan Document establishing the Junior Priority Liens ceases for any reason to be enforceable; provided that it will not be an Event of Default under this clause (m)(1) if the sole result of the failure of one or more Loan Documents to be fully enforceable is that any Junior Priority Lien purported to be granted under such Loan Documents on Collateral, individually or in the aggregate, having a fair market value of not more than $18,000,000, ceases to be an enforceable and perfected Junior Priority Lien; provided, that if such failure is susceptible to cure, no Event of Default shall arise with respect thereto until forty-five (45) days after any officer of the Borrower or any Restricted Subsidiary becomes aware of such failure, which failure has not been cured during such time period;

(2) except as permitted by the Loan Documents, any Junior Priority Lien purported to be granted under any Loan Document on Collateral, individually or in the aggregate, having a fair market value in excess of $18,000,000, ceases to be an enforceable and perfected first-priority Lien, subject to the Intercreditor Agreement and Permitted Prior Liens; provided that if such failure is susceptible to cure, no Event of Default shall arise with respect thereto until forty-five (45) days after any officer of the Borrower or any Restricted Subsidiary becomes aware of such failure, which failure has not been cured during such time period; or

(3) the Borrower or any Guarantor, or any Person acting on behalf of any of them, denies or disaffirms, in writing, any obligation of the Borrower or any Guarantor set forth in or arising under any Loan Document establishing Junior Priority Liens; or

(n) a Change of Control shall occur;

then, and in every such event (other than an event with respect to the Borrower or any Restricted Subsidiary described in clause (g) or (h) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Majority Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon (which shall be payable in cash) and all fees and other obligations (including, for the avoidance of doubt, the Applicable Premium (including any Make-Whole Amount)) of the Borrower accrued hereunder, 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; and in case of any event with respect to the Borrower described in clause (g) or (h) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon (which shall be payable in cash) and all fees and other obligations (including, for the avoidance of doubt, the Applicable Premium (including

any Make-Whole Amount)) of the Borrower accrued hereunder, 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. Without limiting the foregoing, upon the occurrence and during the continuance of an Event of Default, subject to the Intercreditor Agreement the Administrative Agent, the Collateral Trustee and each Lender may protect and enforce its rights under this Agreement and the other Loan Documents by any appropriate proceedings, including proceedings for specific performance of any covenant or agreement contained in this Agreement or any other Loan Document, and the Administrative Agent, the Collateral Trustee and each Lender may enforce payment of any Obligations due and payable hereunder or enforce any other legal or equitable right and remedies which it may have.

ARTICLE IX

THE AGENTS

Section 9.01 Appointment and Authority. Each Lender hereby irrevocably appoints the Administrative Agent and the Collateral Trustee (for purposes of this Article IX, each of the Administrative Agent and the Collateral Trustee are referred to as an "Agent" and collectively as the "Agents") its agent and authorizes the Agents to take such actions on its behalf and to exercise such powers as are delegated to such Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, the Agents are hereby expressly authorized to (a) execute any and all documents (including releases of Liens, termination statements, assignments or other documents reasonably requested by the Borrower in connection with any sale or other disposition of Collateral to the extent such sale or other disposition is permitted by the terms hereof or is otherwise authorized by the terms of the Loan Documents) with respect to the Collateral and the rights of the Lenders with respect thereto, as contemplated by and in accordance with the provisions of this Agreement, the Security Instruments, the Collateral Trust Agreement and the Intercreditor Agreement and (b) negotiate, enforce or the settle any claim, action or proceeding affecting the Lenders in their capacity as such, at the direction of the Majority Lenders, which negotiation, enforcement or settlement will be binding upon each Lender.

Section 9.02 Rights as a Lender. The institution serving as the Administrative Agent and/or the Collateral Trustee hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and such bank 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 other Affiliate thereof as if it were not an Agent hereunder.

Section 9.03 Exculpatory Provisions.

(a) No Agent shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (1) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (2) no Agent shall have any duty to take any discretionary action or

exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that such Agent is instructed in writing to exercise by the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.02), and (3) except as expressly set forth in the Loan Documents, no Agent shall have any duty to disclose, nor shall it be liable for the failure to disclose, any information relating to the Borrower or any of the Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent and/or Collateral Trustee or any of its Affiliates in any capacity.

(b) Notwithstanding anything to the contrary set forth in this Agreement or any other Loan Document, (i) no Agent shall be liable for any action taken or not taken by it with the consent, instruction, direction or at the request of the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.02); and (ii) no Agent shall be liable for any action taken or not taken by it in the absence of its own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. No Agent shall be deemed to have knowledge of any Default unless and until written notice thereof is given to such Agent by the Borrower or a Lender.

(c) No Agent shall be responsible for or have any duty to ascertain or inquire into (1) any statement, warranty or representation made in or in connection with any Loan Document, (2) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (3) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (4) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (5) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to such Agent.

(d) No Agent shall be responsible for (i) perfecting, maintaining, monitoring, preserving or protecting the security interest or Lien granted under this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, (ii) the filing, re-filing, recording, re-recording or continuing or any document, financing statement, Mortgage, assignment, notice, instrument of further assurance or other instrument in any public office at any time or times or (iii) providing, maintaining, monitoring or preserving insurance on or the payment of taxes with respect to any of the Collateral. The actions described in items (i) through (iii) shall be the sole responsibility of the Borrower.

(e) No Agent shall be responsible or liable for any failure or delay in the performance of its obligations under this Agreement or the other Loan Documents arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; terrorism; wars and other military disturbances; sabotage; epidemics; riots; business interruptions; loss or malfunctions of utilities, computer (hardware or software) or communication services; accidents; labor disputes; acts of civil or military authority and governmental action.

(f) No Agent shall be (i) required to qualify in any jurisdiction in which it is not presently qualified to perform its obligations as such Agent or (ii) required to take any enforcement action against a Credit Party or any other obligor outside of the United States.

Section 9.04 Reliance by Agent. Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed or sent by the proper Person. Each Agent may also rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. Each Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.05 Delegation of Duties. Each Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by it. Each Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of Sections 9.03, 9.04 and 9.05 shall apply to any such sub-agent and to the Related Parties of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facility provided for herein as well as activities as Agent. No Agent shall be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the applicable Agent acted with gross negligence or willful misconduct in the selection of such sub agents.

Section 9.06 Resignation of Agent. The Administrative Agent may resign at any time by notifying the Lenders and the Borrower. Upon any such resignation, the Majority Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. If no successor Administrative Agent has been appointed pursuant to the immediately preceding sentence by the 30th day after the date such notice of resignation was given by such Administrative Agent, such Administrative Agent's resignation shall become effective immediately, such retiring Administrative Agent shall be discharged from its duties and obligations hereunder, and the Majority Lenders shall thereafter perform all the duties of such Administrative Agent hereunder and/or under any other Loan Document until such time, if any, as the Majority Lenders appoint a successor Administrative Agent. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After an Administrative Agent's resignation hereunder, the provisions of this Article and Section 10.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while acting as Administrative Agent.

Section 9.07 Non-Reliance on Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Agents 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 Lender also acknowledges that it will, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement or any other Loan Document, any related agreement or any document furnished hereunder or thereunder.

Section 9.08 Right to Request and Act on Instructions. The Administrative Agent may at any time request instructions from the Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Loan Documents the Administrative Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, the Administrative Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Loan Documents until it shall have received such instructions from the Majority Lenders or all or such other portion of the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Person shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Majority Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of the Majority Lenders (or such other applicable portion of the Lenders), the Administrative Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable law or exposes the Administrative Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 10.03.

ARTICLE X

MISCELLANEOUS

Section 10.01 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone or electronic mail (and subject to clause (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(1) if to the Borrower, to EXCO Resources, Inc., 12377 Merit Drive, Suite 1700, Dallas, Texas 75251, Attention: Tyler Farquharson, Vice President, Chief Financial Officer and Treasurer Telecopy No. (214) 368-2087, E-mail: tfarquharson@excoresources.com, with a copy to EXCO Resources, Inc., 12377 Merit Drive, Suite 1700, Dallas, Texas 75251, Attention: Heather Lamparter, Vice President, General Counsel and Secretary, Telecopy No. (214) 368-2087, E-mail: hlamparter@excoresources.com. For purposes of delivering the documents pursuant to Section 5.01(a), (b) and (d), the website address is www.excoresources.com;

(2) if to the Administrative Agent, to Wilmington Trust, National Association, 50 South Sixth Street, Suite 1290, Minneapolis, MN 55402, Attention: Meghan McCauley, Telecopy No.: (612) 217-5651, E-mail: mmccauley@wilmingtontrust.com with a copy to Lindquist & Vennum LLP, 2000 IDS Center, 80 South 8th St., Minneapolis, MN 55402, Attention: Mark Dietzen, Telecopy No.: (612) 371-3207, E-mail: mdietzen@lindquist.com.

(3) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by fax or on the date five Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 10.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 10.01. As agreed to among the Borrower, the Administrative Agent and the applicable Lenders from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable Person provided from time to time by such Person.

The Borrower hereby agrees, unless directed otherwise by the Administrative Agent or unless the electronic mail address referred to below has not been provided by the Administrative Agent to the Borrower, that it will, or will cause its Subsidiaries to, provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to the Loan Documents or to the Lenders under Article V, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (a) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (b) provides notice of any Default or Event of Default under this Agreement or any other Loan Document or (c) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any Borrowing or other extension of credit hereunder (all such non-excluded communications being referred to herein collectively as "Communications"), by transmitting the Communications in an electronic/soft medium that is properly identified in a format acceptable to the Administrative Agent to an electronic mail address as directed by the Administrative Agent. In addition, the Borrower agrees, and agrees to cause its Subsidiaries, to continue to provide the Communications to the Administrative Agent or the Lenders, as the case may be, in the manner specified in the Loan Documents but only to the extent requested by the Administrative Agent.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, the "Borrower Materials") by posting the Borrower Materials on Intralinks or another similar electronic system (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "Public Lender"). The Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States federal and state securities laws (*provided*, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.14); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor" and (z) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not marked as "Public Investor." Notwithstanding the foregoing, the following Borrower Materials shall be deemed to be marked "PUBLIC", unless the Borrower notifies the Administrative Agent promptly that any such document contains material non-public information: (1) the Loan Documents, (2) notification of changes in the terms of the Credit Facilities and (3) all financial statements and accompanying information and certificates delivered pursuant to Section 5.01.

Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States Federal and state securities laws, to make reference to Communications that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS RELATED PARTIES WARRANTS THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS OR THE ADEQUACY OF THE PLATFORM AND EACH EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS IS MADE BY THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES HAVE ANY LIABILITY TO ANY RESTRICTED PERSON, ANY LENDER OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT,

CONTRACT OR OTHERWISE) ARISING OUT OF ANY RESTRICTED PERSON'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY SUCH PERSON IS FOUND IN A FINAL RULING BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED PRIMARILY FROM SUCH PERSON'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its e-mail address set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents. Each Lender agrees that receipt of notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and that the foregoing notice may be sent to such e-mail address.

Nothing herein shall prejudice the right of the Administrative Agent or any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

Section 10.02 Waivers; Amendments.

(a) No failure or delay by the Administrative Agent, the Collateral Trustee or any Lender in exercising any right or power hereunder or under any other Loan Document 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 a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Trustee and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by clause (b) of this Section 10.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Collateral Trustee may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document nor any other provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Credit Party or Credit Parties that are party thereto, the Administrative Agent and the Majority Lenders or by the Credit Party or Credit Parties that are party thereto and the Administrative Agent with the consent of the Majority Lenders; provided that no such agreement shall:

(1) increase the Commitment of any Lender without the written consent of such Lender (including any such Lender that is a Defaulting Lender);

(2) reduce or forgive the principal amount of any Loan or reduce the rate of interest thereon, reduce the Applicable Premium, the Make-Whole Amount or reduce or forgive any interest or fees payable hereunder, without the written consent of each Lender (including any such Lender that is a Defaulting Lender other than fees to which such Defaulting Lender is not entitled to receive as a result of being a Defaulting Lender) affected thereby;

(3) postpone any scheduled date of payment of the principal amount of any Loan, or any date for the payment of any interest, fees or other Obligations hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) affected thereby (it being understood that waiver of a mandatory prepayment of the Loans shall not constitute a postponement or waiver of a scheduled payment or date of expiration);

(4) change Section 2.07, Section 2.08, Section 2.13(a), Section 2.13(b), Section 2.13(c) or Section 2.13(e) in a manner that would alter the manner in which payments are shared, without the written consent of each Lender (including any such Lender that is a Defaulting Lender);

(5) change Section 2.13(b) or Section 10.02(b)(5) in any material respect without the consent of each Lender adversely affected thereby (including any such Lender that is a Defaulting Lender);

(6) change any of the provisions of this Section 10.02(b), 10.02(c) or the definition of "Majority Lender", "Super-Majority Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby;

(7) change the definition of "Change of Control" without the written consent of Super-Majority Lenders (other than any Defaulting Lender);

(8) release any Guarantor from its obligation under its Guaranty (except as otherwise permitted herein or in the other Loan Documents), without the written consent of each Lender (other than any Defaulting Lender); or

(9) except as provided in Article IX or in any Security Instrument, release all or substantially all of the Collateral, without the written consent of each Lender (other than any Defaulting Lender);

provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Trustee hereunder without the prior written consent of the Administrative Agent or the Collateral Trustee, as the case may be. The Administrative Agent may also amend Schedule 2.01 to reflect assignments entered into pursuant to Section 10.04.

(c) Notwithstanding anything herein to the contrary, the Intercreditor Agreement and the Collateral Trust Agreement may be amended in accordance with their terms, including to add additional Indebtedness as Senior Priority Lien Debt, Priority Lien Debt, Junior Priority Lien Debt or Junior Lien Debt and add other parties (or any authorized agent thereof or trustee therefor) holding such Indebtedness thereto and to establish that the Liens on any Collateral securing such Indebtedness shall rank equally with the Liens on such Collateral securing the other Senior Priority Lien Debt, Priority Lien Debt, Junior Priority Lien Debt or Junior Lien Debt, as applicable, then outstanding.

(d) Notwithstanding anything to the contrary contained in this Section 10.02, the Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any of the other Loan Documents to correct any clerical errors or cure any ambiguity, omission, mistake, defect or inconsistency.

Section 10.03 Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay (1) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Collateral Trustee and their respective Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent and the Collateral Trustee, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (2) all out-of-pocket expenses incurred by the Administrative Agent, the Collateral Trustee or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, the Collateral Trustee or any Lender in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, 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 CREDIT PARTIES SHALL INDEMNIFY THE ADMINISTRATIVE AGENT, THE COLLATERAL TRUSTEE AND 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, PENALTIES, LIABILITIES AND RELATED EXPENSES, INCLUDING THE FEES, CHARGES AND DISBURSEMENTS OF ANY COUNSEL FOR ANY INDEMNITEE, INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF (1) THE EXECUTION OR DELIVERY OF THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE PERFORMANCE BY THE PARTIES HERETO OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER OR THE CONSUMMATION OF THE TRANSACTIONS OR ANY OTHER TRANSACTIONS CONTEMPLATED HEREBY, (2) ANY LOAN OR THE USE OF THE PROCEEDS THEREFROM, (3) ANY ACTUAL OR ALLEGED PRESENCE OR RELEASE OF HAZARDOUS MATERIALS ON OR FROM ANY PROPERTY OWNED OR OPERATED BY THE BORROWER OR ANY SUBSIDIARY, OR ANY ENVIRONMENTAL LIABILITY RELATED IN ANY

WAY TO THE BORROWER OR ANY SUBSIDIARY, OR (4) ANY ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY AND REGARDLESS OF WHETHER ANY INDEMNITEE IS A PARTY THERETO; PROVIDED THAT SUCH INDEMNITY SHALL NOT, AS TO ANY INDEMNITEE, BE AVAILABLE TO THE EXTENT THAT SUCH LOSSES, CLAIMS, DAMAGES, LIABILITIES OR RELATED EXPENSES ARE DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NONAPPEALABLE JUDGMENT TO HAVE RESULTED FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE.

(c) To the extent that any Credit Party fails to pay any amount required to be paid by it to the Administrative Agent or the Collateral Trustee under clauses (a) or (b) of this Section 10.03, each Lender severally agrees to pay to the Administrative Agent or the Collateral Trustee, as the case may be, such Lender's pro rata share of such unpaid amount with respect to the amounts to be paid to the Collateral Trustee and such Lender's Applicable Percentage of such unpaid amount with respect to amounts to be paid to the Administrative Agent (in each case, determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or the Collateral Trustee in its capacity as such. For purposes hereof, a Lender's "pro rata share" shall be determined based upon its share of outstanding Loans (or, if all Loans have been paid in full, the aggregate remaining Obligations), determined as if no Lender were a Defaulting Lender).

(d) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CREDIT PARTIES SHALL NOT ASSERT, AND HEREBY WAIVE, ANY CLAIM AGAINST ANY INDEMNITEE, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS, ANY LOAN OR THE USE OF THE PROCEEDS THEREOF.

(e) All amounts due under this Section shall be payable not later than ten (10) days after written demand therefor.

Section 10.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) no Credit Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (and any attempted assignment or transfer by such Credit Party without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. 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 clause (c) of this Section 10.04) 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)

(1) Subject to the conditions set forth in clause (b)(2) below, any Lender may assign to one or more Eligible 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) with the prior written consent (such consent not to be unreasonably withheld or delayed) of the Administrative Agent and the Backstop Commitment Parties.

(2) Assignments shall be subject to the following additional conditions:

(i) except in the case of an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 (or, if less, the entire remaining amount, unless the Administrative Agent otherwise consents);

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of such Lender's Commitment and such Lender's Loans under this Agreement;

(iii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500;

(iv) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and

(v) each assignment shall be subject to the exercise of the Right of First Refusal by the Backstop Commitment Parties, as set forth in Section 10.04(f).

For the purposes of this Section 10.04(b), the term "Approved Fund" has the following meaning:

"Approved Fund" means (x) any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender and (y) Fairfax.

(3) Subject to acceptance and recording thereof pursuant to clause (b)(4) of this Section 10.04, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 2.11, Section 2.12 and Section 10.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with clause (c) of this Section 10.04 except that any attempted assignment or transfer by any Lender that does not comply with clause (C) of Section 10.04(b)(ii) shall be null and void.

(4) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment and Applicable Percentage of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Credit Parties, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Credit Parties and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(5) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in clause (b) of this Section 10.04 any written consent to such assignment required by clause (b) of this Section 10.04, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.05, Section 2.13(d) or Section 10.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon (which shall be payable in cash). No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this clause (b).

(c)

(1) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 10.02(b) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.11 and 2.12 (subject to the requirements and limitations therein, including the requirements under Section 2.12(d) (it being understood that the documentation required under Section 2.12(d) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 2.12 as if it were an assignee under clause (b) of this Section; and (B) shall not be entitled to receive any greater payment under Section 2.11 or Section 2.12, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

(2) (ii) To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement (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 or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank or central bank having jurisdiction over such Lender, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Borrower Buybacks. Notwithstanding anything in this Agreement to the contrary, but subject to (i) the Right of First Refusal and (ii) approval by a majority of the Holders (as defined in the Senior Secured Notes Indenture) of the aggregate principal amount of the then-outstanding Senior Secured Notes or payment of the Priority Lien Obligations, any Lender may, at any time, assign all or a portion of its Loans on a non-pro rata basis to the Borrower in accordance with procedures to be agreed, pursuant to an offer made by the Borrower available to all Lenders on a pro rata basis (a "Dutch Auction"), subject to the following limitations:

(1) the Borrower shall represent and warrant, as of the date of the launch of the Dutch Auction and on the date of any such assignment, that neither it, its Affiliates nor any of its respective directors or officers has any Excluded Information that has not been disclosed to the Lenders generally (other than to the extent any such Lender does not wish to receive material non-public information with respect to the Borrower or its Subsidiaries or any of their respective securities) prior to such date;

(2) immediately and automatically, without any further action on the part of the Borrower, any Lender, the Administrative Agent or any other Person, upon the effectiveness of such assignment of Loans from a Lender to the Borrower, such Loans and all rights and obligations as a Lender related thereto shall, for all purposes under this Agreement, the other Loan Documents and otherwise, be deemed to be irrevocably prepaid (together with the payment of any applicable Premium (including any Make-Whole Amount)), terminated, extinguished, cancelled and of no further force and effect and the Borrower shall neither obtain nor have any rights as a Lender hereunder or under the other Loan Documents by virtue of such assignment;

(3) the Borrower shall not use the proceeds of any Loans for any such assignment; and

(4) no Default or Event of Default shall have occurred and be continuing before or immediately after giving effect to such assignment.

(f) Right of First Refusal of Backstop Commitment Parties.

(1) Grant. The Borrower and each Lender hereby unconditionally and irrevocably grants (and the Administrative Agent hereby acknowledges and agrees to such grant) to each Backstop Commitment Party, in accordance with its ROFR Applicable Percentage, a Right of First Refusal, from and after the Effective Date until the Term Loan Maturity Date.

(2) Notice and Forfeiture. In connection with the consent solicitation required to be delivered to the Backstop Commitment Parties pursuant to Section 10.04(b)(1) above, an assigning Lender must deliver all assignment documentation providing for any proposed assignment of 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) to the Backstop Commitment Parties. Such delivered assignment documentation shall consist of a completed, but unexecuted or unsigned, Assignment and Assumption, identifying, among other things, the material terms and conditions (including the price and form of consideration) of the proposed assignment and the identity of the Eligible Assignee(s). To exercise its Right of First Refusal under this Section, the applicable Backstop Commitment Party must deliver a ROFR Notice to the Administrative Agent within ten (10) days after receipt of the consent solicitation and assignment documentation required to be delivered to the Backstop Commitment Parties under Section 10.04(b)(1) and this subsection (f)(2). The applicable accepting Backstop Commitment Party, if any, shall consummate the proposed assignment in accordance with its ROFR Applicable Percentage, within a reasonable period of time following delivery of the ROFR Notice to the Administrative Agent, and in no event more than fifteen (15) calendar days following such delivery, or as otherwise agreed between the applicable accepting Backstop Commitment Party and the assigning Lender. Upon receipt of such ROFR Notice, the Administrative Agent shall deliver a copy of such ROFR Notice to the applicable Lender(s) and Eligible Assignee(s). Failure to deliver a ROFR Notice within the time period provided for in this subsection will result in the forfeiture of the applicable Backstop Commitment Party's exercise of the Right of First Refusal as it applies to the proposed assignment which occasioned its application and will otherwise authorize the consummation of the proposed assignment, on the terms provided to the Backstop Commitment Parties, between the applicable Lender(s) and Eligible Assignee(s).

Section 10.05 Survival. All covenants, agreements, representations and warranties made by the Credit Parties 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, the Collateral Trustee or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitments have not expired or terminated. The provisions of Section 2.11, Section 2.12 and Section 10.03 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.

Section 10.06 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements

with respect to fees payable to the Administrative Agent and/or the Collateral Trustee constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. **THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG 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.** Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.07 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 10.08 Right of Setoff. Subject to the Intercreditor Agreement, if an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower against any of and all the obligations of any Credit Party now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section 10.08 and Section 7.08 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

Section 10.09 GOVERNING LAW; JURISDICTION; CONSENT TO SERVICE OF PROCESS.

(a) THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

(b) EACH CREDIT PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK, NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, 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 OR, TO THE EXTENT PERMITTED BY LAW, IN 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 SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, THE COLLATERAL TRUSTEE OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AGAINST ANY CREDIT PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) EACH CREDIT PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH 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 PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY 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 SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.01. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

Section 10.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY 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 OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (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 BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 10.12 Confidentiality. Each of the Administrative Agent, the Collateral Trustee and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors,

officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority or any self-regulatory authority or agency possessing investigative powers and the ability to sanction members for non-compliance, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as, or otherwise consistent with, those of this Section, to (1) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (2) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Credit Parties and their obligations, (g) with the consent of the Borrower, (h) to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section or (2) becomes available to the Administrative Agent, the Collateral Trustee or any Lender on a nonconfidential basis from a source other than a Credit Party and (i) to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the facilities or to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent in connection with the administration and management of this Agreement and the Loan Documents. For the purposes of this Section, "Information" means all information received from any Credit Party relating to any Credit Party or its business, other than any such information that is available to the Administrative Agent, the Collateral Trustee or any Lender on a nonconfidential basis prior to disclosure by any Credit Party; provided that, in the case of information received from any Credit Party after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Administrative Agent, the Collateral Trustee and each Lender may disclose the existence of this Agreement and the information about this Agreement to service providers to the Administrative Agent, the Collateral Trustee and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents. Neither the Borrower nor any of its Affiliates shall issue or cause the publication of any press release or other public announcement (excluding, for the avoidance of doubt, public filings made with the SEC) with respect to this Agreement without the prior written consent of the Administrative Agent if Fairfax is mentioned in such press release or public announcement.

Section 10.13 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 are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the 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 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 Effective Rate to the date of repayment, shall have been received by such Lender.

Section 10.14 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act") hereby notifies each Credit Party that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender to identify each Credit Party in accordance with the Act. The Borrower shall, upon the request of the Administrative Agent, the Collateral Trustee or any Lender, provide all documentation and other information that the Administrative Agent, the Collateral Trustee or such Lender reasonably requires to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

Section 10.15 Flood Insurance Regulation. Notwithstanding any provision in any Mortgage to the contrary, in no event is any Building (as defined in the applicable Flood Insurance Regulation) or Manufactured (Mobile) Home (as defined in the applicable Flood Insurance Regulation) located on the Mortgaged Properties within an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968 included in the definition of "Mortgaged Properties" and no such Building or Manufactured (Mobile) Home shall be encumbered by any such Mortgage. As used herein, "Flood Insurance Regulations" shall mean (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statue thereto, (iii) the National Flood Insurance Reform Act of 1994 (amending 42 USC 4001, et seq.), as the same may be amended or recodified from time to time, and (iv) the Flood Insurance Reform Act of 2004 and any regulations promulgated thereunder.

Section 10.16 No Fiduciary Duty. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Credit Party acknowledges and agrees that: (a) (1) the arranging and other services regarding this Agreement provided by the Administrative Agent and by any lead arranger, syndication agent, documentation agent or similar agent hereunder, the Collateral Trustee, and the Lenders and each of their respective Affiliates (collectively, solely for purposes of this Section 10.16, the "Lenders") are arm's-length commercial transactions between the Borrower, each other Credit Party and their respective Affiliates, on the one hand, and the Administrative Agent, the other agents, the Collateral Trustee and the Lenders, on the other hand, (2) each of the Borrower and the other Credit Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (3) the Borrower and each other Credit Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (b) (1) the Administrative Agent, each other agent, the Collateral Trustee and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, any other Credit Party or any of

their respective Affiliates, or any other Person and (2) neither the Administrative Agent, any other agent, the Collateral Trustee nor any Lender has any obligation to the Borrower, any other Credit Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent, the other agents, the Collateral Trustee and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Credit Parties and their respective Affiliates, and neither the Administrative Agent, any other agent, the Collateral Trustee nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Credit Party or any of their respective Affiliates. The Administrative Agent, the other agents, the Collateral Trustee and the Lenders may have economic interests that conflict with those of the Credit Parties and their respective Subsidiaries and their stockholders and/or their affiliates. Each Credit Party, for itself and on behalf of its Subsidiaries, agrees that nothing in this Agreement or the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between the Administrative Agent, the other agents, the Collateral Trustee and any Lender, on the one hand, and any Credit Party or its Subsidiaries, their stockholders or their affiliates, on the other. To the fullest extent permitted by law, each of the Borrower and each other Credit Party hereby waives and releases any claims that it may have against the Administrative Agent, the other agents, the Collateral Trustee or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby. Each Credit Party, for itself and its Subsidiaries, agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Credit Party or Subsidiary, in connection with such transaction or the process leading thereto.

Section 10.17 Intercreditor Agreement and Collateral Trust Agreement. Each Lender hereunder (a) acknowledges that it has received a copy of the Intercreditor Agreement and the Collateral Trust Agreement, (b) consents to the subordination of Liens provided for in the Intercreditor Agreement, (c) agrees that it will be bound by, and will take no actions contrary to, the provisions of the Intercreditor Agreement or to the provisions of the Collateral Trust Agreement, in each case, as if it was a signatory thereto and (d) authorizes and instructs (1) the Administrative Agent to enter into the Collateral Trust Agreement (including any and all amendments, amendments and restatements, modifications, supplements and acknowledgements thereto permitted hereby from time to time) as Administrative Agent and (2) the Collateral Trustee to enter into the Intercreditor Agreement and the Collateral Trust Agreement (including, in each case, any and all amendments, amendments and restatements, modifications, supplements and acknowledgements thereto permitted hereby from time to time) as Collateral Trustee, in each case, on behalf of such Lender, and by its acceptance of the benefits of the Security Instruments, hereby acknowledges and agrees to be bound by all such provisions. Notwithstanding anything herein to the contrary, each Lender, the Administrative Agent and the Collateral Trustee acknowledges that the Lien and security interest granted to the Collateral Trustee pursuant to the Security Instruments and the exercise of any right or remedy by the Administrative Agent and/or the Collateral Trustee thereunder, are subject to the provisions of the Intercreditor Agreement and the Collateral Trust Agreement. In the event of a conflict or any inconsistency between the terms of the Intercreditor Agreement or the Collateral Trust Agreement and the Security Instruments, the terms of the Intercreditor Agreement or the Collateral Trust Agreement, as applicable, shall prevail. In the event of a conflict or any

inconsistency between the terms of the Intercreditor Agreement and the Collateral Trust Agreement, the terms of the Intercreditor Agreement shall prevail. The foregoing provisions are intended as an inducement to the First Lien RBL Lenders and holders of the Senior Secured Notes to permit the incurrence of Obligations under this Agreement and to extend credit to the Borrower and such lenders are intended third party beneficiaries of such provisions.

Section 10.18 Additional Indebtedness. In connection with the incurrence by any Credit Party of any Junior Priority Lien Obligations permitted to be incurred pursuant to the terms hereof and of any other then outstanding Junior Priority Lien Documents, each of the Administrative Agent and the Collateral Trustee agree to execute and deliver any necessary supplements, joinders or confirmations to the Intercreditor Agreement and Collateral Trust Agreement and any amendments, amendments and restatements, restatements or waivers of or supplements to or other modifications to any Security Instrument, and to make or consent to any filings or take any other actions in connection therewith, as may be reasonably deemed by the Borrower to be necessary or reasonably desirable for any Lien on the assets of any Credit Party permitted to secure such Indebtedness to become a valid, perfected lien (with such priority as may be designated by the relevant Credit Party to the extent such priority is permitted by the Loan Documents) pursuant to the Security Instrument being so amended, amended and restated, restated, waived, supplemented or otherwise modified or otherwise.

Section 10.19 Compliance with Provisions in this Agreement. For purposes of determining compliance with the provisions specified in this Agreement, each Lender 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 the Lenders (or any required subset thereof) unless the Administrative Agent shall have received prompt written notice from such Lender specifying its objection thereto. This provision is intended solely for the benefit of the Administrative Agent and its successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto.

Section 10.20 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(1) a reduction in full or in part or cancellation of any such liability;

(2) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(3) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

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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.

BORROWER:

EXCO RESOURCES, INC.

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

GUARANTORS:

EXCO HOLDING (PA), INC.
EXCO PRODUCTION COMPANY (PA), LLC
EXCO PRODUCTION COMPANY (WV), LLC
EXCO RESOURCES (XA), LLC
EXCO SERVICES, INC.
EXCO MIDCONTINENT MLP, LLC
EXCO PARTNERS GP, LLC
EXCO PARTNERS OLP GP, LLC
EXCO HOLDING MLP, INC.
EXCO LAND COMPANY, LLC

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

EXCO OPERATING COMPANY, LP

By: EXCO Partners OLP GP, LLC
its general partner

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

EXCO GP PARTNERS OLD, LP

By: EXCO Partners GP, LLC
its general partner

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

RAIDER MARKETING, LP

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

RAIDER MARKETING GP, LLC

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Administrative Agent

By: /s/ Renee Kuhl
Name: Renee Kuhl
Title: Vice President

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Collateral Trustee

By: /s/ Renee Kuhl
Name: Renee Kuhl
Title: Vice President

BRIT INSURANCE (GIBRALTAR) PCC LIMITED
BRIT SYNDICATES LIMITED
CLEARWATER SELECT INSURANCE COMPANY
FAIRFAX FINANCIAL HOLDINGS MASTER TRUST FUND
FEDERATED INSURANCE COMPANY OF CANADA
NEWLINE CORPORATE NAME LIMITED (SYNDICATE)
NORTHBRIDGE GENERAL INSURANCE CORPORATION
NORTHBRIDGE PERSONAL INSURANCE CORPORATION
ODYSSEY REINSURANCE COMPANY
TIG INSURANCE (BARBADOS) LTD.
UNITED STATES FIRE INSURANCE COMPANY
WENTWORTH INSURANCE COMPANY LTD.
ZENITH INSURANCE COMPANY
ZENITH INSURANCE COMPANY, as lenders

By: Hamblin Watsa Investment Counsel Ltd., its Investment Manager

By: /s/ Paul Rivett
Name: Paul Rivett
Title: Chief Operating Officer

Avenue Energy Opportunities Fund, L.P., as a Lender

By: /s/ Sonia Gardner
Name: Sonia Gardner
Title: Member

Bank of America, N.A., as a Lender

By: /s/ Tracey-Ann Scarlett
Name: Tracey-Ann Scarlett
Title: Assistant Vice President

ENERGY STRATEGIC ADVISORY SERVICES LLC, as a Lender

By: /s/ Jonathan Siegler
Name: Jonathan Siegler
Title: Chief Financial Officer

Canadian Imperial Bank of Commerce, as a Lender

By: /s/ David Evelyn
Name: David Evelyn
Title: General Manager

By: /s/ Neermala Hurry
Name: Neermala Hurry
Title: Assistant General Manager

Chou Associates Fund, as a Lender

By: /s/ Francis Chou
Name: Francis Chou
Title: Portfolio Manager

Chou RRSP Fund, as a Lender

By: /s/ Francis Chou
Name: Francis Chou
Title: Portfolio Manager

Chou Bond Fund, as a Lender

By: /s/ Francis Chou
Name: Francis Chou
Title: Portfolio Manager

Chou Income Fund, as a Lender

By: /s/ Francis Chou
Name: Francis Chou
Title: Portfolio Manager

Chou Opportunity Fund, as a Lender

By: /s/ Francis Chou
Name: Francis Chou
Title: Portfolio Manager

JPMORGAN STRATEGIC INCOME OPPORTUNITIES, as a Lender

By: /s/ Amy Ronca
Name: Amy Ronca
Title: Vice President, JP Morgan Investment Management

ADVANCED SERIES TRUST – AST J.P. MORGAN STRATEGIC OPPORTUNITIES PORTOFLIO, as a Lender

By: /s/ Amy Ronca
Name: Amy Ronca
Title: Vice President, JP Morgan Investment Management

JPMORGAN TOTAL RETURN FUND, as a Lender

By: /s/ Amy Ronca
Name: Amy Ronca
Title: Vice President, JP Morgan Investment Management

JPMORGAN TAX AWARE INCOME OPPORTUNITIES FUND, as a Lender

By: /s/ Amy Ronca
Name: Amy Ronca
Title: Vice President, JP Morgan Investment Management

GEN IV INVESTMENT OPPORTUNITIES, LLC

By: /s/ Paul Segal
Name: Paul Segal
Title: President

VEGA ASSET PARTNERS, L.P.

By: /s/ Paul Segal
Name: Paul Segal
Title: President

NB DISTRESSED DEBT INVESTMENT FUND LIMITED,
as a Lender

By: Neuberger Berman Investment Advisers LLC as Investment Manager

By: /s/ Michael Holmberg
Name: Michael Holmberg
Title: Managing Director

NB DISTRESSED DEBT MASTER FUND LP,
as a Lender

By: Neuberger Berman Investment Advisers LLC as Investment Manager

By: /s/ Michael Holmberg
Name: Michael Holmberg
Title: Managing Director

EXHIBIT C

EXCO RESOURCES, INC., ET AL.

Expert Report of Kevin Bonebrake, Lazard Frères & Co. LLC

EXHIBIT D

Exhibit 10.9

EXECUTION VERSION

INTERCREDITOR AGREEMENT

dated as of October 26, 2015 and
amended as of March 15, 2017
among

JPMorgan Chase Bank, N.A.,
as Original Priority Lien Agent,

and

Wilmington Trust, National Association,
as Second Lien Collateral Trustee

and

Wilmington Trust, National Association,
as Original Third Lien Collateral Agent

THIS IS THE INTERCREDITOR AGREEMENT REFERRED TO (A) IN THE AMENDED AND RESTATED CREDIT AGREEMENT, DATED AS OF JULY 31, 2013, AS AMENDED, SUPPLEMENTED, RESTATED OR OTHERWISE MODIFIED FROM TIME TO TIME, AMONG EXCO RESOURCES, INC., AS BORROWER, CERTAIN SUBSIDIARIES THEREOF, AS GUARANTORS, THE LENDERS PARTY THERETO FROM TIME TO TIME AND JPMORGAN CHASE BANK, N.A., AS ADMINISTRATIVE AGENT, AND IN THE OTHER LOAN DOCUMENTS REFERRED TO IN SUCH AMENDED AND RESTATED CREDIT AGREEMENT, (B) IN THE INDENTURE DATED AS OF MARCH 15, 2017, AMONG EXCO RESOURCES, INC., AS THE ISSUER, CERTAIN SUBSIDIARIES OF EXCO RESOURCES, INC., AS GUARANTORS, WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE AND WILMINGTON TRUST, NATIONAL ASSOCIATION, AS COLLATERAL TRUSTEE AND IN THE OTHER NOTE DOCUMENTS REFERRED TO IN SUCH INDENTURE (SUCH INDENTURE RELATING TO THE 8.0% / 11.0% 1.5 LIEN SENIOR SECURED PIK TOGGLE NOTES DUE 2022), (C) IN THE 1.75 LIEN TERM LOAN CREDIT AGREEMENT DATED AS OF MARCH 15, 2017, AMONG EXCO RESOURCES, INC., AS BORROWER, CERTAIN OF ITS SUBSIDIARIES FROM TIME TO TIME PARTY THERETO, AS GUARANTORS, WILMINGTON TRUST, NATIONAL ASSOCIATION., AS ADMINISTRATIVE AGENT AND WILMINGTON TRUST, NATIONAL ASSOCIATION, AS COLLATERAL AGENT AND THE OTHER LOAN DOCUMENTS REFERRED TO IN SUCH THIRD LIEN TERM LOAN CREDIT AGREEMENT, AND (D) IN THE TERM LOAN CREDIT AGREEMENT DATED AS OF OCTOBER 19, 2015, AS AMENDED BY THE FIRST AMENDMENT THERETO DATED AS OF MARCH 15, 2017, AMONG EXCO RESOURCES, INC., AS BORROWER, CERTAIN OF ITS SUBSIDIARIES FROM TIME TO TIME PARTY THERETO, AS GUARANTORS WILMINGTON TRUST, NATIONAL ASSOCIATION, AS ADMINISTRATIVE AGENT AND WILMINGTON TRUST, NATIONAL ASSOCIATION, AS COLLATERAL AGENT AND THE OTHER LOAN DOCUMENTS REFERRED TO IN SUCH TERM LOAN CREDIT AGREEMENT.

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INTERCREDITOR AGREEMENT, dated as of March 15, 2017 (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof, this "Agreement"), among JPMorgan Chase Bank, N.A., as administrative agent for the Priority Lien Secured Parties referred to herein (in such capacity, and together with its successors and assigns in such capacity, the "Original Priority Lien Agent"), Wilmington Trust, National Association, as Second Lien Collateral Trustee (as hereinafter defined) and Wilmington Trust, National Association, as collateral agent for the Third Lien Secured Parties referred to herein (in such capacity, and together with its successors in such capacity, the "Original Third Lien Collateral Agent").

W I T N E S S E T H

WHEREAS, reference is made to (a) the Priority Credit Agreement (defined below), (b) the Second Lien Indenture (defined below), (c) the Additional Second Lien Documents (defined below), (d) the Senior Third Lien Credit Agreement (defined below), (e) the Junior Third Lien Credit Agreement (defined below) and (f) the Additional Third Lien Documents (defined below).

WHEREAS, from time to time following the date hereof, EXCO Resources, Inc., a Texas corporation (together with its successors and assigns, the "Company") may (i) incur Additional Second Lien Obligations (as defined below) to the extent permitted by the Secured Debt Documents (as defined below) and (ii) incur Additional Third Lien Obligations (each as defined below) to the extent permitted by the Secured Debt Documents (as defined below).

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Priority Lien Agent (for itself and on behalf of the Priority Lien Secured Parties), the Second Lien Collateral Trustee (for itself and on behalf of the Second Lien Secured Parties) and the Third Lien Collateral Agent (for itself and on behalf of the Third Lien Secured Parties) agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01 Construction; Certain Defined Terms.

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any reference herein to any agreement, instrument, other document, statute or regulation shall be construed as referring to such agreement, instrument, other document, statute or regulation as from time to time amended, supplemented or otherwise modified in accordance with the terms of each applicable Secured Debt Document (including, for the avoidance of doubt, this Agreement), (ii) any reference herein to any Person shall be construed to

include such Person's successors and assigns, but shall not be deemed to include the subsidiaries of such Person unless express reference is made to such subsidiaries, (iii) the words "herein," "hereof and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Articles, Sections and Annexes shall be construed to refer to Articles, Sections and Annexes of this Agreement, (v) unless otherwise expressly qualified herein, the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (vi) the term "or" is not exclusive.

(b) All terms used in this Agreement that are defined in Article 1, 8 or 9 of the New York UCC (whether capitalized herein or not) and not otherwise defined herein have the meanings assigned to them in Article 1, 8 or 9 of the New York UCC. If a term is defined in Article 9 of the New York UCC and another Article of the UCC, such term shall have the meaning assigned to it in Article 9 of the New York UCC.

(c) Unless otherwise set forth herein, all references herein to (i) the Second Lien Collateral Trustee shall be deemed to refer to the Second Lien Collateral Trustee in its capacity as collateral trustee under the Second Lien Collateral Trust Agreement and (ii) the Third Lien Collateral Agent shall be deemed to refer to the Third Lien Collateral Agent in its capacity as collateral agent under the Third Lien Collateral Trust Agreement.

(d) As used in this Agreement, the following terms have the meanings specified below:

"Accounts" has the meaning assigned to such term in Section 3.01(a).

"Additional Second Lien Debt Facility" means any Indebtedness for which the requirements of Section 4.04(b) of this Agreement applicable thereto have been satisfied, as amended, restated, modified, renewed, refunded, restated, restructured, increased, supplemented, replaced or refinanced in whole or in part from time to time in accordance with each applicable Secured Debt Document; provided that neither the Second Lien Indenture nor any Second Lien Substitute Facility shall constitute an Additional Second Lien Debt Facility at any time.

"Additional Second Lien Documents" means the definitive documentation for any Additional Second Lien Debt Facility and the Additional Second Lien Security Documents.

"Additional Second Lien Obligations" means, with respect to any Grantor, any obligations of such Grantor owed to any Additional Second Lien Secured Party (or any of its Affiliates) in respect of the Additional Second Lien Documents.

"Additional Second Lien Secured Parties" means, at any time, the Second Lien Collateral Trustee, the trustee, agent or other representative of the holders of any Series of Second Lien Debt who maintains the transfer register for such Series of Second Lien Debt, the beneficiaries of each indemnification obligation undertaken by any Grantor under any Additional Second Lien Document, each other holder of, or obligee in respect of, any Additional Second Lien Obligations outstanding at such time and each holder or lender pursuant to any Additional Second Lien Document; provided that the Second Lien Indenture Secured Parties shall not be deemed Additional Second Lien Secured Parties.

"Additional Second Lien Security Documents" means the definitive documentation for any Additional Second Lien Debt Facility (insofar as the same grants a Lien on the Collateral) and any other security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements, or grants or transfers for security, now existing or entered into after the date hereof, executed and delivered by the Company or any other Grantor creating (or purporting to create) a Lien upon the Second Lien Collateral in favor of the Additional Second Lien Secured Parties, in each case, as amended, modified, renamed, restated or replaced from time to time in accordance with the terms of this Agreement (including, for the avoidance of doubt, Section 4.05(b)) (including any such agreements, assignments, mortgages, deeds of trust and other documents or instruments associated with any Second Lien Substitute Facility).

"Additional Third Lien Debt Facility" means any Indebtedness for which the requirements of Section 4.04(b) of this Agreement applicable thereto have been satisfied, as amended, restated, modified, renewed, refunded, restated, restructured, increased, supplemented, replaced or refinanced in whole or in part from time to time in accordance with each applicable Secured Debt Document; provided that neither the Third Lien Debt Facility nor any Third Lien Substitute Facility shall constitute an Additional Third Lien Debt Facility at any time.

"Additional Third Lien Documents" means the definitive documentation for any Additional Third Lien Debt Facility and the Additional Third Lien Security Documents.

"Additional Third Lien Obligations" means, with respect to any Grantor, any obligations of such Grantor owed to any Additional Third Lien Secured Party (or any of its Affiliates) in respect of the Additional Third Lien Documents.

"Additional Third Lien Secured Parties" means, at any time, the Third Lien Collateral Agent, the trustee, agent or other representative of the holders of any Series of Third Lien Debt who maintains the transfer register for such Series of Third Lien Debt, the beneficiaries of each indemnification obligation undertaken by any Grantor under any Additional Third Lien Document and each other holder of, or obligee in respect of, any holder or lender pursuant to any Series of Third Lien Debt outstanding at such time.

"Additional Third Lien Security Documents" means the definitive documentation for any Additional Third Lien Debt Facility (insofar as the same grants a Lien on the Collateral) and any other security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements, or grants or transfers for security, now existing or entered into after the date hereof, executed and delivered by the Company or any other Grantor creating (or purporting to create) a Lien upon the Third Lien Collateral in favor of the Additional Third Lien Secured Parties), in each case, as amended, modified, renamed, restated or replaced from time to time in accordance with the terms of this Agreement (including, for the avoidance of doubt, Section 4.05(c)) (including any such agreements, assignments, mortgages, deeds of trust and other documents or instruments associated with any Third Lien Substitute Facility).

"Affiliate" of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"Backstop Commitment Parties" means Hamblin Watsa Investment Counsel Ltd. and its Affiliates (including Fairfax Financial Holdings Limited), ESAS, OCM EXCO Holdings LLC, and Gen IV and, in each case, their respective Affiliates (excluding, in each case, the Company and its Subsidiaries) and any arranger, representative or agent appointed by such parties to act on their behalf in their collective capacity as the "Backstop Commitment Parties" under the Second Lien Indenture and the other Second Lien Documents.

"Bankruptcy Code" means Title 11 of the United States Code.

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

"Borrowing Base" means the maximum amount in dollars determined or redetermined by the lenders under the Priority RBL Credit Agreement or any Priority Substitute Credit Facility, as applicable, as the aggregate lending value to be ascribed to the Oil and Gas Properties of the Company and the Grantors against which such lenders are prepared to provide loans or other Indebtedness to the Company and the Grantors under the Priority RBL Credit Agreement, using their customary practices and standards for determining reserve based loans and which are generally applied by lenders to borrowers in the Oil and Gas Business, as determined semi-annually during each year and/or on such other occasions as may be provided for by the Priority RBL Credit Agreement, and which is based upon, *inter alia*, the review by such lenders of the Hydrocarbon reserves, royalty interests and assets and liabilities of the Company and its Subsidiaries.

"Business Day" means any day excluding Saturday, Sunday and any other day on which banking institutions are not required to be open in the State of New York City, or the principal place of payment.

"Capital Stock" of any Person means any and all shares, interests (including partnership interests), rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

"Cash Management Obligations" means any obligations of the Company or a Grantor owed to any lender (or any Affiliate of any such lender) as permitted under the Priority RBL Credit Agreement in respect of treasury management arrangements or depositary or other cash management services, including commercial credit card and merchant card services.

"Class" means (a) in the case of Priority Lien Debt, the Priority Lien Debt, taken together, (b) in the case of Second Lien Debt, every Series of Second Lien Debt, taken together and (c) in the case of Third Lien Debt, every Series of Third Lien Debt, taken together.

"Collateral" means all of the assets and property of any Grantor, whether real, personal or mixed, constituting the Priority Lien Collateral, the Second Lien Collateral and/or the Third Lien Collateral.

"Credit Facilities" means, collectively, one or more debt facilities (including, without limitation, the Priority Credit Agreement), capital markets financings or other financing arrangements (including commercial paper facilities or indentures) providing for revolving credit loans, term loans, letters of credit, bankers acceptances, notes or other long-term indebtedness, including any mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof, in whole or in part, and any indentures or credit facilities or commercial paper facilities that replace, refund, supplement or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding, supplemental or refinancing facility, arrangement or indenture that increases the amount permitted to be borrowed or issued thereunder or alters the maturity thereof or adds additional borrowers or guarantors thereunder, and whether by the same or any other agent, trustee, lender or group of lenders or holders.

"DIP Financing" has the meaning assigned to such term in Section 4.02(b).

"DIP Financing Liens" has the meaning assigned to such term in Section 4.02(b).

"DIP Lenders" has the meaning assigned to such term in Section 4.02(b).

"Discharge of Priority Lien Obligations" means the occurrence of all of the following:

(a) termination or expiration of all commitments to extend credit that would constitute Priority Lien Debt;

(b) payment in full in cash of the principal of (to the extent such principal does not constitute Excess Priority Lien Obligations) and interest at the rate provided for in the Priority Lien Documents, including any default interest, (regardless of whether such interest has accrued before or after commencement of an Insolvency or Liquidation Proceeding, and in each case whether or not allowed or allowable in an Insolvency or Liquidation Proceeding) and premium (if any) (in each case, whether or not allowed or allowable in an Insolvency or Liquidation Proceeding) on all Priority Lien Debt (other than any undrawn letters of credit);

(c) discharge or cash collateralization (at the lower of (i) 105% of the aggregate undrawn amount and (ii) the percentage of the aggregate undrawn amount required for release of Liens under the terms of the applicable Priority Lien Document) of all outstanding letters of credit constituting Priority Lien Debt that are not Excess Priority Lien Obligations;

(d) payment in full in cash of obligations in respect of Hedging Obligations that are secured by the Priority Liens (and, with respect to any particular Swap Agreement, termination of such agreement and payment in full in cash of all obligations thereunder or such other arrangements as have been made by the counterparty thereto (and communicated to the Priority Lien Agent) pursuant to the terms of the Priority Credit Agreement) other than such Hedging Obligations that have been novated or collateralized to the extent required by the terms thereof; and

(e) payment in full in cash of all other Priority Lien Obligations, including without limitation, Cash Management Obligations, that are outstanding and unpaid at the time the Priority Lien Debt is paid in full in cash (other than any obligations for taxes, costs, indemnifications, reimbursements, damages and other liabilities in respect of which no claim or demand for payment has been made at or prior to such time);

(f) a release in favor of the Priority Lien Secured Parties and the Priority Lien Agent in form and substance reasonably satisfactory to the Priority Lien Secured Parties and the Priority Lien Agent from the Company and its subsidiaries or the successor thereof;

provided that, if, at any time after the Discharge of Priority Lien Obligations has occurred, and so long as either (I) no Event of Default under the Second Lien Documents has occurred and is then continuing or (II) the prior written consent of the Second Lien Collateral Trustee has then been obtained, the Company, any Grantor or any other guarantor enters into any Priority Lien Document evidencing a Priority Lien Debt which incurrence is not prohibited by the applicable Secured Debt Documents, then such Discharge of Priority Lien Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement with respect to such new Priority Lien Debt (other than with respect to any actions taken as a result of the occurrence of such first Discharge of Priority Lien Obligations), and, from and after the date on which the Company designates such Indebtedness as Priority Lien Debt in accordance with this Agreement, the obligations under such Priority Lien Document shall automatically and without any further action be treated as Priority Lien Obligations (subject, however, in all events, to the Priority Lien Cap) for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth in this Agreement, any Second Lien Obligations shall be deemed to have been at all times Second Lien Obligations and at no time Priority Lien Obligations and any Third Lien Obligations shall be deemed to have been at all times Third Lien Obligations and at no time Priority Lien Obligations or Second Lien Obligations. For the avoidance of doubt, a Replacement as contemplated by Section 4.04(a) shall not be deemed to cause a Discharge of Priority Lien Obligations.

"Discharge of Second Lien Obligations" means the occurrence of all of the following:

(a) payment in full in cash of the principal of and interest at the rate provided for in the Second Lien Documents, including any default interest, (regardless of whether such interest has accrued before or after commencement of an Insolvency or Liquidation Proceeding, and, in each case, whether or not allowed or allowable in an Insolvency or Liquidation Proceeding) and premium (if any) (in each case, whether or not allowed or allowable in an Insolvency or Liquidation Proceeding) on all Second Lien Debt;

(b) payment in full in cash of all other Second Lien Obligations that are outstanding and unpaid at the time the Second Lien Debt is paid in full in cash (other than any obligations for taxes, costs, indemnifications, reimbursements, damages and other liabilities in respect of which no claim or demand for payment has been made at or prior to such time);

provided that, if at any time after the Discharge of Second Lien Obligations has occurred, the Company, any Grantor or any other guarantor enters into any Second Lien Document evidencing a Second Lien Obligation which incurrence is not prohibited by the applicable Secured Debt Documents, then such Discharge of Second Lien Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement with respect to such new Second Lien Obligations (other than with respect to any actions taken as a result of the occurrence of such first Discharge of Second Lien Obligations), and, from and after the date on which the Company designates such Indebtedness as Second Lien Debt in accordance with this Agreement, the obligations under such Second Lien Document shall automatically and without any further action be treated as Second Lien Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth in this Agreement and any Third Lien Obligations shall be deemed to have been at all times Third Lien Obligations and at no time Second Lien Obligations. For the avoidance of doubt, a Replacement as contemplated by Section 4.04(a) shall not be deemed to cause a Discharge of Second Lien Obligations.

"Disposition" means any sale, lease, exchange, assignment, license, contribution, transfer or other disposition. "Dispose" shall have a correlative meaning.

"ESAS" means Energy Strategic Advisory Services LLC, a Delaware limited liability company.

"Excess Priority Lien Obligations" means Obligations constituting Priority Lien Obligations of the type referred to in clause (a) of the definition of "Priority Lien Cap" that are in excess of the amount in clause (a) of the definition of "Priority Lien Cap."

"Financial Officer" of any Person means the Chief Financial Officer, Chief Accounting Officer, principal accounting officer, Controller, Treasurer or Assistant Treasurer of such Person.

"Gen IV" means Gen IV Investment Opportunities, LLC and its Affiliate Vega Asset Partners, LP.

"Governmental Authority" means the government of the United States or any other nation, or any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other Person exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Grantor" means the Company, and each other subsidiary of the Company that shall have granted any Lien in favor of any of the Priority Lien Agent, the Second Lien Collateral Trustee or the Third Lien Collateral Agent on any of its assets or properties to secure any of the Secured Obligations.

"Hedging Obligations" means, with respect to any Grantor, (a) the "Lender Hedging Obligations", as defined in the Priority RBL Credit Agreement (as in effect on the date hereof and to the extent amended or modified, so long as such amendment or modification is not materially adverse to the interests of the Second Lien Secured Parties or Third Lien Secured Parties) and (b) under any Priority Substitute Credit Facility, the obligations of such Grantor incurred in the normal course of business and consistent with past practices and not for speculative purposes under any Swap Agreement, including:

(a) interest rate swap agreements, interest rate cap agreements and interest rate collar agreements entered into with one of more financial institutions and designed to protect such Grantor or any subsidiary thereof entering into the agreement against fluctuations in interest rates with respect to indebtedness incurred;

(b) foreign exchange contracts and currency protection agreements entered into with one or more financial institutions and designed to protect such Grantor or any subsidiary thereof entering into the agreement against fluctuations in currency exchanges rates with respect to indebtedness incurred;

(c) any commodity futures contract, commodity option or other similar agreement or arrangement designed to protect against fluctuations in the price of oil, natural gas or other commodities used, produced, processed or sold by that Grantor or any subsidiary thereof at the time; and

(d) other agreements or arrangements designed to protect such Grantor or any subsidiary thereof against fluctuations in interest rates, commodity prices or currency exchange rates.

"Hydrocarbons" means oil, gas, casinghead gas, drip gasoline, natural gasoline, condensate, distillate, liquid hydrocarbons, gaseous hydrocarbons and all products refined or separated therefrom.

"Indebtedness" has the meaning assigned to such term in the Priority RBL Credit Agreement (as in effect on the date hereof).

"Junior Third Lien Administrative Agent" means Wilmington Trust, National Association, together with its successors in such capacity.

"Junior Third Lien Collateral Agent" means Wilmington Trust, National Association, together with its successors in such capacity.

"Junior Third Lien Credit Agreement" means the Term Loan Credit Agreement, dated as of October 19, 2015, as amended by the First Amendment thereto dated as of March 15, 2017, among the Company, the Guarantors party thereto from time to time, the Lenders (as

defined in therein) party thereto from time to time, the Junior Third Lien Collateral Agent and the Junior Third Lien Administrative Agent, in each case, as amended, restated, modified, renewed, refunded, restated, restructured, increased, supplemented, replaced or refinanced in whole or in part from time to time in accordance with each applicable Secured Debt Document.

"Junior Third Lien Debt Facility" means the indebtedness and other credit facilities under the Junior Third Lien Credit Agreement and the other Junior Third Lien Documents.

"Junior Third Lien Documents" means the definitive documentation for the Junior Third Lien Debt Facility (including the Junior Third Lien Credit Agreement) and the Junior Third Lien Security Documents.

"Junior Third Lien Obligations" means, with respect to any Grantor, any obligations of such Grantor owed to any Junior Third Lien Secured Party (or any of its Affiliates) in respect of the Junior Third Lien Documents.

"Junior Third Lien Secured Parties" means, at any time, the Junior Third Lien Trustee, the Junior Third Lien Collateral Agent, the trustees, agents and other representatives of the holders of the Junior Third Lien Debt Facility (including any holders of notes pursuant to supplements executed in connection with the issuance of Series of Junior Third Lien Debt under the Junior Third Lien Debt Facility) who maintains the transfer register for such Junior Third Lien Debt, the beneficiaries of each indemnification obligation undertaken by any Grantor under any Junior Third Lien Document and each other holder of, or obligee in respect of, any Junior Third Lien Obligations, any holder or lender pursuant to any Junior Third Lien Document outstanding at such time; provided that the Additional Third Lien Secured Parties shall not be deemed Junior Third Lien Secured Parties.

"Junior Third Lien Security Documents" means the Junior Third Lien Debt Facility (insofar as the same grants a Lien on the Collateral), the Third Lien Collateral Trust Agreement, each agreement listed in Part C of Exhibit B hereto, the Security Instruments (as defined in the Third Lien Debt Facility) and any other security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements, or grants or transfers for security, now existing or entered into after the date hereof, executed and delivered by the Company or any other Grantor creating (or purporting to create) a Lien upon Collateral in favor of the Original Third Lien Collateral Agent, in each case, as amended, modified, renamed, restated or replaced from time to time in accordance with the terms of this Agreement (including, for the avoidance of doubt, Section 4.05(c)) (including any such agreements, assignments, mortgages, deeds of trust and other documents or instruments associated with any Third Lien Substitute Facility).

"Junior Third Lien Trustee" means, from and after the date of execution and delivery of the Junior Third Lien Debt Facility, the agent, collateral agent, trustee or other representative of the lenders or other holders of the indebtedness and other obligations evidenced thereunder or governed thereby, together with its successors in such capacity.

"Insolvency or Liquidation Proceeding" means:

(a) any case commenced by or against the Company or any other Grantor under the Bankruptcy Code or any other Bankruptcy Law, any other proceeding for the reorganization, arrangement, recapitalization or adjustment or marshalling of the assets or liabilities of the Company or any other Grantor, any receivership or assignment for the benefit of creditors relating to the Company or any other Grantor or any similar case or proceeding relative to the Company or any other Grantor or its creditors, as such, in each case whether or not voluntary;

(b) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to the Company or any other Grantor, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or

(c) any other proceeding of any type or nature in which substantially all claims of creditors of the Company or any other Grantor are determined and any payment or distribution is or may be made on account of such claims.

"Lien" means any mortgage, pledge, security interest or encumbrance, Lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

"New York UCC" means the Uniform Commercial Code as from time to time in effect in the State of New York.

"Obligations" means, with respect to any Indebtedness, all obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursements, and other amounts payable pursuant to the documentation governing such Indebtedness.

"Officers' Certificate" means a certificate signed by two officers of the Company, one of whom must be either the principal executive officer or a Financial Officer of the Company.

"Oil and Gas Business" means:

(a) the acquisition, exploration, exploitation, development, operation and disposition of interests in Hydrocarbons;

(b) the gathering, marketing, distribution, treating, processing, storage, refining, selling and transporting of any production from such interests or properties and the marketing of Hydrocarbons obtained from unrelated Persons;

(c) any business relating to or arising from exploration for or exploitation, development, production, treatment, processing, storage, refining, transportation, gathering or marketing of Hydrocarbons and products produced in association therewith;

(d) any other related energy business, including power generation and electrical transmission business where fuel required by such business is supplied, directly or indirectly, from Hydrocarbons produced substantially from properties in which the Company or the Restricted Subsidiaries, directly or indirectly, participate;

(e) any business relating to oil field sales and service; and

(f) any activity necessary, appropriate or incidental to the activities described in the preceding clauses (a) through (e) of this definition.

"Oil and Gas Properties" means: (a) direct and indirect interests in and rights with respect to oil, gas, mineral and related properties and assets of any kind and nature, direct or indirect, including, without limitation, wellbore interests, working, royalty and overriding royalty interests, mineral interests, leasehold interests, production payments, operating rights, net profits interests, other non-working interests, contractual interests, non-operating interests and rights in any pooled, unitized or communitized acreage by virtue of such interest being a part thereof; (b) interests in and rights with respect to Hydrocarbons other minerals or revenues therefrom and contracts and agreements in connection therewith and claims and rights thereto (including oil and gas leases, operating agreements, unitization, communitization and pooling agreements and orders, division orders, transfer orders, mineral deeds, royalty deeds, oil and gas sales, exchange and processing contracts and agreements and, in each case, interests thereunder), and surface interests, fee interests, reversionary interests, reservations and concessions related to any of the foregoing; (c) easements, rights-of-way, licenses, permits, leases, and other interests associated with, appurtenant to, or necessary for the operation of any of the foregoing; (d) interests in oil, gas, water, disposal and injection wells, equipment and machinery (including well equipment and machinery), oil and gas production, gathering, transmission, compression, treating, processing and storage facilities (including tanks, tank batteries, pipelines and gathering systems), pumps, water plants, electric plants, gasoline and gas processing plants, refineries and other tangible or intangible, movable or immovable, real or personal property and fixtures located on, associated with, appurtenant to, or necessary for the operation of any of the foregoing; and (e) all seismic, geological, geophysical and engineering records, data, information, maps, licenses and interpretations.

"Original Priority Lien Agent" has the meaning assigned to such term in the preamble hereto.

"Original Third Lien Collateral Agent" has the meaning assigned to such term in the preamble hereto.

"Permitted Junior DIP Financing" has the meaning assigned to such term Section 4.02(c).

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision thereof or other entity.

"Preferred Stock" as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

"Priority Confirmation Joinder" means an agreement substantially in the form of Exhibit A.

"Priority Credit Agreement" means the Priority RBL Credit Agreement.

"Priority Lien" means a Lien granted by the Company or any other Grantor in favor of the Priority Lien Agent, at any time, upon any Property of the Company or such other Grantor to secure Priority Lien Obligations (including Liens on such Collateral under the security documents associated with any Priority Substitute Credit Facility).

"Priority Lien Agent" means the Priority RBL Agent.

"Priority Lien Cap" means, as of any date, the sum of (a) the aggregate principal amount of all indebtedness plus the unused portion of the Borrowing Base (plus the unused portion of any other then unutilized facilities thereunder, if any) at such time outstanding at any time under the Priority Credit Agreement (with outstanding letters of credit being deemed to have a principal amount equal to the stated amount thereof) not in excess of $150,000,000 (inclusive of, Priority Lien Protective Advances), plus (b) the amount of all Cash Management Obligations and Hedging Obligations, to the extent such Cash Management Obligations or Hedging Obligations are secured by the Priority Liens and to the extent incurred, and outstanding, not in violation of the Second Lien Documents, plus (c) the amount of accrued and unpaid interest at the rate provided for in the Priority Lien Documents, including default interest, whether incurred before or after commencement of an Insolvency or Liquidation Proceeding, and whether or not allowed or allowable in an Insolvency or Liquidation Proceeding and outstanding fees, costs, charges, make whole amounts and expenses (including legal fees and expenses) provided for in the Priority Lien Documents (in each case whether incurred before or after commencement of an Insolvency or Liquidation Proceeding, and whether or not allowed or allowable in an Insolvency or Liquidation Proceeding).

"Priority Lien Collateral" means all "Collateral", as defined in the Priority Credit Agreement or any other Priority Lien Document, and any other assets of any Grantor now or at any time hereafter subject to Liens which secure, but only to the extent securing, any Priority Lien Obligation.

"Priority Lien Debt" means the indebtedness under the Priority Credit Agreement (including letters of credit and reimbursement obligations with respect to the Priority RBL Credit Agreement (with outstanding letters of credit being deemed to have a principal amount equal to the stated amount thereof)) that was permitted to be incurred and secured under the Priority Credit Agreement, the Second Lien Indenture, any Additional Second Lien Debt Facility, any Second Lien Substitute Facility, any Third Lien Debt Facility, any Additional Third Lien Debt Facility and any Third Lien Substitute Facility (or as to which the lenders under the Priority Credit Agreement obtained an Officers' Certificate at the time of incurrence to the effect that such indebtedness was permitted to be incurred and secured by all applicable Secured Debt Documents) and additional indebtedness under any Priority Substitute Credit Facility.

"Priority Lien Documents" means the Priority Credit Agreement, the Priority Lien Security Documents, the other "Loan Documents" (or equivalent term) (as defined in the Priority RBL Credit Agreement) and all other loan documents, notes, guarantees, instruments and agreements governing or evidencing, or executed or delivered in connection with, the Priority Credit Agreement or any Priority Substitute Credit Facility.

"Priority Lien Obligations" means the Priority Lien Debt and all other Obligations in respect of or in connection with Priority Lien Debt together with Hedging Obligations and the Cash Management Obligations, in each case to the extent that such Obligations are secured by Priority Liens. For the avoidance of doubt, Hedging Obligations shall only constitute Priority Lien Obligations to the extent that such Hedging Obligations are secured under the terms of the Priority Credit Agreement and Priority RBL Lien Security Documents. Notwithstanding any other provision hereof, the term "Priority Lien Obligations" will include accrued interest (at the rate provided for in the Priority Lien Documents, including default interest), fees, costs, make whole amounts, indemnification and reimbursement and other charges incurred under the Priority Credit Agreement and the other Priority Lien Documents, in each case whether incurred before or after commencement of an Insolvency or Liquidation Proceeding, and in each case whether or not allowed or allowable in an Insolvency or Liquidation Proceeding. To the extent that any payment with respect to the Priority Lien Obligations (whether by or on behalf of any Grantor, as proceeds of security, enforcement of any right of set-off, or otherwise) is declared to be fraudulent or preferential in any respect, set aside, or required to be paid to a debtor in possession, trustee, receiver, or similar Person, then the obligation or part thereof originally intended to be satisfied will be deemed to be reinstated and outstanding as if such payment had not occurred.

"Priority Lien Protective Advances" means any advance made by one or more Priority Lien Secured Parties for the purpose of (a) maintaining, protecting or preserving the Collateral and/or the Priority Lien Secured Parties' rights under the Priority Lien Documents or which is otherwise made for the benefit of the Priority Lien Secured Parties, (b) enhancing the likelihood of, or maximizing the amount of, repayment of any Priority Lien Obligation and/or (c) paying any other amount chargeable to, or required to be paid by, any Grantor hereunder or under any other Priority Lien Document as a result of the actions described under clauses (a) or (b) above.

"Priority Lien Release Notice" has the meaning assigned to such term in Section 4.01(a).

"Priority Lien Secured Parties" means, at any time, the Priority Lien Agent, each lender, issuing bank or noteholder under the Priority Credit Agreement, each holder, provider or obligee of any Hedging Obligations and Cash Management Obligations that is a lender under the Priority RBL Credit Agreement or an Affiliate (as defined herein or in the Priority RBL Credit Agreement) thereof and, in each case, that is a secured party (or a party entitled to the benefits of the security) under any Priority Lien Document, the beneficiaries of each indemnification obligation undertaken by any Grantor under any Priority Lien Document, each other Person that provides letters of credit, guarantees or other credit support related thereto under any Priority Lien Document and each other holder of, or obligee in respect of, any Priority Lien Obligations (including pursuant to a Priority Substitute Credit Facility), in each case to the extent designated as a secured party (or a party entitled to the benefits of the security) under any Priority Lien Document outstanding at such time.

"Priority Lien Security Documents" means the Priority Credit Agreement (insofar as the same grants a Lien on the Collateral), each agreement listed in Part A of Exhibit B hereto, and any other security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, control agreements, or grants or transfers for security, now existing or entered into after the date hereof, executed and delivered by the Company or any other Grantor creating (or purporting to create) a Lien upon Collateral in favor of the Priority Lien Agent, in each case, as amended, modified, renamed, restated or replaced from time to time in accordance with the terms of this Agreement (including, for the avoidance of doubt, Section 4.05(a)) (including any such agreements, assignments, mortgages, deeds of trust and other documents or instruments associated with any Priority Substitute Credit Facility).

"Priority RBL Agent" means the Original Priority Lien Agent, and, from and after the date of execution and delivery of a Priority Substitute Credit Facility, the agent, collateral agent, trustee or other representative of the lenders or holders of the indebtedness and other Obligations evidenced thereunder or governed thereby, in each case, together with its successors in such capacity.

"Priority RBL Credit Agreement" means the Amended and Restated Credit Agreement, dated as of July 31, 2013, among the Company, as borrower, subsidiaries thereof party thereto, as guarantors, the Original Priority Lien Agent, and the lenders party thereto from time to time, as amended, restated, adjusted, waived, renewed, extended, supplemented or otherwise modified from time to time to the extent not otherwise prohibited by the terms hereof with the same and/or different lenders and/or agents and any credit agreement, loan agreement, note agreement, promissory note, indenture or any other agreement or instrument evidencing or governing the terms of any Priority Substitute Credit Facility.

"Priority Substitute Credit Facility" means any Credit Facility with respect to which the requirements contained in Section 4.04(a) of this Agreement have been satisfied and that Replaces the Priority Credit Agreement then in existence. For the avoidance of doubt, any Priority Substitute Credit Facility shall be required to be a revolving asset-based loan facility; provided that any Priority Lien securing such Priority Substitute Credit Facility shall be subject to the terms of this Agreement for all purposes (including the Lien priorities as set forth herein as of the date hereof).

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

"Replaces" means, (a) in respect of any agreement with reference to any Priority Credit Agreement or any Priority Lien Obligations or any Priority Substitute Credit Facility, that such agreement refunds, refinances or replaces such Priority Credit Agreement, the Priority Lien Obligations thereunder or such Priority Substitute Credit Facility in whole (in a transaction that is in compliance with Section 4.04(a)) and that all commitments thereunder are terminated, or, to the extent permitted by the terms of the Priority Credit Agreement, Priority Lien Obligations or

such Priority Substitute Credit Facility, in part, (b) in respect of any agreement with reference to the Second Lien Documents, the Second Lien Obligations or any Second Lien Substitute Facility, that such indebtedness refunds, refinances or replaces the Second Lien Documents, the Second Lien Obligations or such Second Lien Substitute Facility in whole (in a transaction that is in compliance with Section 4.04(a)) and that all commitments thereunder are terminated, or, to the extent permitted by the terms of the Second Lien Documents, the Second Lien Obligations or such Second Lien Substitute Facility, in part and (c) in respect of any agreement with reference to the Third Lien Documents, the Third Lien Obligations or any Third Lien Substitute Facility, that such indebtedness refunds, refinances or replaces the Third Lien Documents, the Third Lien Obligations or such Third Lien Substitute Facility in whole (in a transaction that is in compliance with Section 4.04(a)) and that all commitments thereunder are terminated, or, to the extent permitted by the terms of the Third Lien Documents, the Third Lien Obligations, or such Third Lien Substitute Facility, in part. "Replace," "Replaced" and "Replacement" shall have correlative meanings.

"Restricted Subsidiary" has the meaning assigned to such term in the Priority Credit Agreement as in effect on the date hereof, and any component definition used therein has the meaning set forth in the Priority Credit Agreement on the date hereof.

"Right of First Offer" means the bona fide right, but not the obligation, of the Backstop Commitment Parties to acquire, by way of assignment, on a ratable basis in accordance with the applicable Backstop Commitment Party's ROFO Applicable Percentage and in accordance with Section 4.10 of this Agreement, all or a portion of the rights and obligations of any Lender (as defined in the Priority Credit Agreement) under the Priority Credit Agreement (including all or a portion of its Revolving Commitment and the Loans at the time owing to it (each as defined in the Priority Credit Agreement)) that are to be assigned by any such Lender pursuant to the terms of the Priority Credit Agreement and Section 4.10 of this Agreement.

"ROFO Agent" means Hamblin Watsa Investment Counsel Ltd., together with its successors in such capacity.

"ROFO Applicable Percentage" means, with respect to Hamblin Watsa Investment Counsel Ltd. and its Affiliates (including Fairfax Financial Holdings Limited), 50.33%, with respect to ESAS, 23.33%, with respect to OCM EXCO Holdings LLC, 13.17% and with respect to Gen IV, 13.17%;; provided that between and among all or any of the Backstop Commitment Parties, from time to time, such Backstop Commitment Parties may agree to transfer (as between any two Backstop Commitment Parties, whether permanently or temporarily), reduce (unilaterally by any individual Backstop Commitment Parties, whether permanently or temporarily) or otherwise modify their ROFO Applicable Percentages (as agreed between all Backstop Commitment Parties).

"ROFO Notice" means written notice from a Backstop Commitment Party notifying the Priority RBL Agent that such Backstop Commitment Party intends to exercise its Right of First Offer as to a proposed assignment of Loans and Revolving Commitments (each as defined in the Priority Credit Agreement) under the Priority Credit Agreement, and which ROFO Notice shall identify, among other things, the material terms and conditions of the proposed offer from the applicable Backstop Commitment Party (including the amount of the proposed assigned Loans and Revolving Commitments (each as defined in the Priority Credit Agreement) that the applicable Backstop Commitment Party proposes to purchase and the price and form of consideration applicable thereto).

"Second Lien" means a Lien granted by a Second Lien Document to the Second Lien Collateral Trustee, at any time, upon any Collateral by any Grantor to secure Second Lien Obligations (including Liens on such Collateral under the security documents associated with any Second Lien Substitute Facility).

"Second Lien Collateral" means all "Collateral", as defined in any Second Lien Document, and any other assets of any Grantor now or at any time hereafter subject to Liens which secure, but only to the extent securing, any Second Lien Obligations.

"Second Lien Collateral Trustee" means Wilmington Trust, National Association, together with its successors in such capacity appointed pursuant to the Second Lien Collateral Trust Agreement, and, from and after the date of execution and delivery of the Second Lien Substitute Facility, the agent, collateral agent, trustee or other representative of the lenders or other holders of the indebtedness and other obligations evidenced thereunder or governed thereby, together with its successors in such capacity.

"Second Lien Collateral Trust Agreement" means that certain Collateral Trust Agreement, dated as of the Effective Date, among the Company, the Guarantors party thereto, the Second Lien Collateral Trustee and the Senior Secured Notes Trustee, as representative for the Senior Secured Notes, as the same may be amended, restated, amended and restated, supplemented, replaced (whether upon or after termination or otherwise) or otherwise modified or restated in accordance with the terms.

"Second Lien Debt" means the indebtedness under the Second Lien Indenture and guarantees thereof, and indebtedness under the other Second Lien Indenture Documents, and all additional indebtedness incurred under any Additional Second Lien Documents and guarantees thereof and all additional indebtedness under the Second Lien Indenture and guarantees thereof, in each case, that was permitted to be incurred and secured in accordance with the Secured Debt Documents and with respect to which the requirements of Section 4.04(b) have been (or are deemed) satisfied, and all Indebtedness incurred under any Second Lien Substitute Facility.

"Second Lien DIP Financing" has the meaning assigned to such term in Section 4.02(c).

"Second Lien Documents" means the Second Lien Indenture Documents and the Additional Second Lien Documents.

"Second Lien Indenture" means the indenture (with respect to the 8.0%/11.0% 1.5 Lien Senior Secured PIK Toggle Notes due 2022) dated as of March 15, 2017, among Exco Resources, Inc., as the issuer, certain subsidiaries of Exco Resources, Inc., as guarantors, the Second Lien Trustee and the Second Lien Collateral Trustee, as amended, restated, adjusted, waived, renewed, extended, supplemented or otherwise modified from time to time in accordance with the terms hereof, and any credit agreement, loan agreement, note agreement, promissory note, indenture or any other agreement or instrument evidencing or governing the terms of any Second Lien Substitute Facility.

"Second Lien Indenture Documents" means the Second Lien Indenture, the Second Lien Indenture Security Documents and all other loan documents (including the Notes (as defined in the Second Lien Indenture)), notes, guarantees, instruments and agreements governing or evidencing the Second Lien Indenture Obligations or any Second Lien Substitute Facility.

"Second Lien Indenture Obligations" means, with respect to any Grantor, any obligations of such Grantor owed to any Second Lien Indenture Secured Party (or any of its Affiliates) in respect of the Second Lien Indenture Documents.

"Second Lien Indenture Secured Parties" means, at any time, the Second Lien Collateral Trustee, the Second Lien Trustee, the Holders (as defined in the Second Lien Indenture) and any other trustees, agents and other representatives of the Holders (as defined in the Second Lien Indenture), the beneficiaries of each indemnification obligation undertaken by any Grantor under any Second Lien Indenture Document and each other holder of, or obligee in respect of, any Second Lien Obligations, any holder pursuant to any Second Lien Indenture Document outstanding at such time; provided that the Additional Second Lien Secured Parties shall not be deemed Second Lien Indenture Secured Parties.

"Second Lien Indenture Security Documents" means the Second Lien Indenture (insofar as the same grants a Lien on the Collateral), the Second Lien Collateral Trust Agreement, each agreement listed in Part B of Exhibit B hereto, the Security Instruments (as defined in the Second Lien Indenture) and any other security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements, or grants or transfers for security, now existing or entered into after the date hereof, executed and delivered by the Company or any other Grantor creating (or purporting to create) a Lien upon Collateral in favor of the Second Lien Collateral Trustee, in each case, as amended, modified, renamed, restated or replaced from time to time in accordance with the terms of this Agreement (including, for the avoidance of doubt, Section 4.05(b)) (including any such agreements, assignments, mortgages, deeds of trust and other documents or instruments associated with any Second Lien Substitute Facility).

"Second Lien Obligations" means Second Lien Debt and all other Obligations in respect thereof. Notwithstanding any other provision hereof, the term "Second Lien Obligations" will include accrued interest (at the rate provided for in the Second Lien Documents, including default interest), fees, costs, make whole amounts, indemnification and reimbursement obligations, and other charges incurred under the Second Lien Indenture and the other Second Lien Documents, in each case, whether incurred before or after commencement of an Insolvency or Liquidation Proceeding and, in each case, whether or not allowed or allowable in an Insolvency or Liquidation Proceeding. To the extent that any payment with respect to the Second Lien Obligations (whether by or on behalf of any Grantor, as proceeds of security, enforcement of any right of set-off, or otherwise) is declared to be fraudulent or preferential in any respect, set aside, or required to be paid to a debtor in possession, trustee, receiver, or similar Person, then the obligation or part thereof originally intended to be satisfied will be deemed to be reinstated and outstanding as if such payment had not occurred.

"Second Lien Purchasers" has the meaning assigned to such term in Section 3.06.

"Second Lien Representative" means (a) in the case of the Second Lien Indenture, the Second Lien Trustee, and (b) in the case of any other Series of Second Lien Debt, the trustee, agent or representative of the holders of such Series of Second Lien Debt that (x) is appointed as a Second Lien Representative (for purposes related to the administration of the security documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Second Lien Debt, together with its successors in such capacity, and (y) has become party to the Second Lien Collateral Trust Agreement by executing a joinder in the form required under the Second Lien Collateral Trust Agreement.

"Second Lien Secured Parties" means the Second Lien Indenture Secured Parties and the Additional Second Lien Secured Parties.

"Second Lien Security Documents" means the Second Lien Indenture Security Documents and the Additional Second Lien Security Documents.

"Second Lien Standstill Period" has the meaning assigned to such term in Section 3.02(a)(i).

"Second Lien Substitute Facility" means any facility with respect to which the requirements contained in Section 4.04(a) of this Agreement have been satisfied and that is permitted to be incurred pursuant to the Priority Lien Documents, the proceeds of which are used to, among other things, Replace the Second Lien Indenture and/or any Additional Second Lien Debt Facility then in existence. For the avoidance of doubt, no Second Lien Substitute Facility shall be required to be evidenced by notes or other instruments and may be a facility evidenced or governed by a credit agreement, loan agreement, note agreement, promissory note, indenture or any other agreement or instrument; provided that any such Second Lien Substitute Facility shall be subject to the terms of this Agreement for all purposes (including the Lien priority as set forth herein as of the date hereof) as the other Liens securing the Second Lien Obligations are subject to under this Agreement.

"Second Lien Trustee" means Wilmington Trust, National Association, together with its successors in such capacity appointed as trustee pursuant to the terms of the Second Lien Indenture.

"Section 363 Event" has the meaning assigned to such term in Section 4.02(d).

"Section 363 Notice" has the meaning assigned to such term in Section 4.02(d).

"Section 363 Objections" has the meaning assigned to such term in Section 4.02(d).

"Secured Debt Documents" means the Priority Lien Documents, the Second Lien Documents and the Third Lien Documents.

"Secured Debt Representative" means the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Agent.

"Secured Obligations" means the Priority Lien Obligations, the Second Lien Obligations and the Third Lien Obligations.

"Secured Parties" means the Priority Lien Secured Parties, the Second Lien Secured Parties and the Third Lien Secured Parties.

"Security Documents" means the Priority Lien Security Documents, the Second Lien Security Documents and the Third Lien Security Documents.

"Senior Third Lien Administrative Agent" means Wilmington Trust, National Association., together with its successors in such capacity.

"Senior Third Lien Collateral Agent" means Wilmington Trust, National Association, together with its successors in such capacity.

"Senior Third Lien Credit Agreement" means the 1.75 Lien Term Loan Credit Agreement, dated as of March 15, 2017, among the Company, the Guarantors party thereto from time to time, the Lenders (as defined in therein) party thereto from time to time, the Original Third Lien Collateral Agent and the Senior Third Lien Administrative Agent, in each case, as amended, restated, modified, renewed, refunded, restated, restructured, increased, supplemented, replaced or refinanced in whole or in part from time to time in accordance with each applicable Secured Debt Document.

"Senior Third Lien Debt Facility" means the indebtedness and other credit facilities under the Senior Third Lien Credit Agreement and the other Senior Third Lien Documents.

"Senior Third Lien Documents" means the definitive documentation for the Senior Third Lien Debt Facility (including the Senior Third Lien Credit Agreement) and the Senior Third Lien Security Documents.

"Senior Third Lien Obligations" means, with respect to any Grantor, any Obligations of such Grantor owed to any Senior Third Lien Secured Party (or any of its Affiliates) in respect of the Senior Third Lien Documents.

"Senior Third Lien Secured Parties" means, at any time, the Senior Third Lien Trustee, the Senior Third Lien Collateral Agent, the trustees, agents and other representatives of the holders of the indebtedness under the Senior Third Lien Documents including any holders of notes pursuant to supplements executed in connection with the issuance of Series of Senior Third Lien Debt under the Senior Third Lien Documents) who maintains the transfer register for such Senior Third Lien Debt, the beneficiaries of each indemnification obligation undertaken by any Grantor under any Senior Third Lien Document and each other holder of, or obligee in respect of, any Senior Third Lien Obligations, any holder or lender pursuant to any Senior Third Lien Document outstanding at such time; provided that the Senior Third Lien Secured Parties shall not be deemed Junior Third Lien Secured Parties.

"Senior Third Lien Security Documents" means the Senior Third Lien Debt Facility (insofar as the same grants a Lien on the Collateral), the Third Lien Collateral Trust Agreement, each agreement listed in Part D of Exhibit B hereto, the Security Instruments (as defined in the Third Lien Debt Facility) and any other security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements, or grants or transfers for security, now existing or entered into after the date hereof, executed and delivered by the Company or any other Grantor creating (or purporting to create) a Lien upon Collateral in favor of the Original Third Lien Collateral Agent, in each case, as amended, modified, renamed, restated or replaced from time to time in accordance with the terms of this Agreement (including, for the avoidance of doubt, Section 4.05(c)) (including any such agreements, assignments, mortgages, deeds of trust and other documents or instruments associated with any Third Lien Substitute Facility).

"Senior Third Lien Trustee" means, from and after the date of execution and delivery of the Senior Third Lien Debt Credit Agreement, the agent, collateral agent, trustee or other representative of the lenders or other holders of the indebtedness and other obligations evidenced thereunder or governed thereby, together with its successors in such capacity.

"Series of Second Lien Debt" means, severally, the Second Lien Indenture and each other issue or series of Second Lien Debt (including any Additional Second Lien Debt Facility) for which a single transfer register is maintained.

"Series of Secured Debt" means the Priority Lien Debt, each Series of Second Lien Debt and each Series of Third Lien Debt.

"Series of Third Lien Debt" means, severally, the Third Lien Debt Facility and each other issue or series of Third Lien Debt (including any Additional Third Lien Debt Facility) for which a single transfer register is maintained.

"subsidiary" means, with respect to any Person, any corporation, limited liability company, association, partnership or other business entity of which more than 50% of the total voting power of shares of Voting Stock is at the time owned or controlled, directly or indirectly, by (a) such Person; (b) such Person and one or more subsidiaries of such Person; or (c) one or more subsidiaries of such Person.

"Standstill Period" means the Second Lien Standstill Period, the Third Lien First Standstill Period and the Third Lien Second Standstill Period, as applicable.

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that in no event shall any (a) phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of any Grantor or any Restricted Subsidiary or (b) near term spot market purchase and sale of a commodity in the ordinary course of business based on a price determined by a rate quoted on an organized exchange for actual physical delivery, be a Swap Agreement.

"Third Lien" means a Lien granted by a Third Lien Document to the Third Lien Collateral Agent, at any time, upon any Collateral by any Grantor to secure Third Lien Obligations (including Liens on such Collateral under the security documents associated with any Third Lien Substitute Facility).

"Third Lien Collateral" means all "Collateral", as defined in any Junior Third Lien or Senior Third Lien Document, and any other assets of any Grantor now or at any time hereafter subject to Liens which secure, but only to the extent securing, any Senior Third Lien or Junior Third Lien Obligations.

"Third Lien Collateral Agent" means the Original Third Lien Collateral Agent, and, from and after the date of execution and delivery of the Third Lien Substitute Facility, the agent, collateral agent, trustee or other representative of the lenders or other holders of the indebtedness and other obligations evidenced thereunder or governed thereby, together with its successors in such capacity.

"Third Lien Collateral Trust Agreement" means the Collateral Trust Agreement, dated as of October 26, 2015 (as amended and restated as of March 15, 2017), among the Company, the other Grantors from time to time party thereto, the Senior Third Lien Administrative Agent, the Junior Third Lien Administrative Agent, the other Third Lien Representatives from time to time party thereto and the Third Lien Collateral Agent, as amended, restated, adjusted, waived, renewed, extended, supplemented or otherwise modified from time to time, in accordance with each applicable Third Lien Document.

"Third Lien Debt" means indebtedness under the Senior Third Lien Credit Agreement and the Junior Third Lien Debt Credit Agreement and indebtedness incurred under, any Senior Third Lien Documents or Junior Third Lien Documents, any Additional Third Lien Documents and all indebtedness incurred under any Third Lien Substitute Facility.

"Third Lien Debt Facilities" means the Senior Third Lien Debt Facility and the Junior Third Lien Debt Facility.

"Third Lien Documents" means the Senior Third Lien Documents and the Junior Third Lien Documents, the Additional Third Lien Documents and all other loan documents, notes, guarantees, instruments and agreements governing or evidencing any Third Lien Substitute Facility.

"Third Lien First Standstill Period" has the meaning assigned to such term in Section 3.02(a)(ii).

"Third Lien Obligations" means Third Lien Debt and all other Obligations in respect thereof. Notwithstanding any other provision hereof, the term "Third Lien Obligations" will include accrued interest (at the rate provided for in the Third Lien Documents, including default interest, fees, costs, make whole amounts, indemnification and reimbursement obligations, and other charges incurred under the Senior Third Lien Credit Agreement and the

other Third Lien Documents, whether incurred before or after commencement of an Insolvency or Liquidation Proceeding and whether or not allowed or allowable in an Insolvency or Liquidation Proceeding). To the extent that any payment with respect to the Third Lien Obligations (whether by or on behalf of any Grantor, as proceeds of security, enforcement of any right of set-off, or otherwise) is declared to be fraudulent or preferential in any respect, set aside, or required to be paid to a debtor in possession, trustee, receiver, or similar Person, then the obligation or part thereof originally intended to be satisfied will be deemed to be reinstated and outstanding as if such payment had not occurred.

"Third Lien Representative" means (a) in the case of the Third Lien Debt Facility, the Third Lien Collateral Agent and (b) in the case of any Series of Third Lien Debt, the trustee, agent or representative of the holders of such Series of Third Lien Debt who (i) is appointed as a Third Lien Representative (for purposes related to the administration of the security documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Third Lien Debt, together with its successors in such capacity, and (ii) has become party to the Third Lien Collateral Trust Agreement by executing a joinder in the form required under the Third Lien Collateral Trust Agreement.

"Third Lien Second Standstill Period" has the meaning assigned to such term in Section 3.02(b).

"Third Lien Secured Parties" means the Senior Third Lien Secured Parties, Junior Third Lien Secured Parties and the Additional Third Lien Secured Parties.

"Third Lien Security Documents" means the Senior Third Lien Security Documents, Junior Third Lien Security Documents and the Additional Third Lien Security Documents.

"Third Lien Substitute Facility" means any facility with respect to which the requirements contained in Section 4.04(a) of this Agreement have been satisfied and that is permitted to be incurred pursuant to the Priority Lien Documents and the Second Lien Documents, the proceeds of which are used to, among other things, Replace any Third Lien Debt Facility and/or Additional Third Lien Debt Facility then in existence. For the avoidance of doubt, no Third Lien Substitute Facility shall be required to be evidenced by notes or other instruments and may be a facility evidenced or governed by a credit agreement, loan agreement, note agreement, promissory note, indenture or any other agreement or instrument; provided that any such Third Lien Substitute Facility shall be subject to the terms of this Agreement for all purposes (including the Lien priority as set forth herein as of the date hereof) as the other Liens securing the Third Lien Obligations are subject to under this Agreement.

"Third Lien Trustee" means, from and after the date of execution and delivery of the Third Lien Debt Facility or Third Lien Substitute Facility, the agent, collateral agent, trustee or other representative of the lenders or other holders of the indebtedness and other obligations evidenced thereunder or governed thereby, together with its successors in such capacity. As of March 15, 2017, the Third Lien Trustee is the Senior Third Lien Trustee.

"TIA" means the Trust Indenture Act of 1939 (15 U.S.C. Section 77aaa-77bbbb) as in effect on the date hereof.

"Voting Stock" of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

ARTICLE II

LIEN PRIORITIES

SECTION 2.01 Relative Priorities.

(a) The grant of the Priority Liens pursuant to the Priority Lien Documents, the grant of the Second Liens pursuant to the Second Lien Documents and the grant of the Third Liens pursuant to the Third Lien Documents create three separate and distinct Liens on the Collateral.

(b) Notwithstanding anything contained in this Agreement, the Priority Lien Documents, the Second Lien Documents, the Third Lien Documents or any other agreement or instrument or operation of law to the contrary, or any other circumstance whatsoever and irrespective of (i) how a Lien was acquired (whether by grant, possession, statute, operation of law, subrogation, or otherwise), (ii) the time, manner, or order of the grant, attachment or perfection of a Lien, (iii) any conflicting provision of the New York UCC or other applicable law, (iv) any defect in, or non-perfection, setting aside, or avoidance of, a Lien or a Priority Lien Document, a Second Lien Document or a Third Lien Document, (v) the modification of a Priority Lien Obligation, a Second Lien Obligation or a Third Lien Obligation, and (vi) the subordination of a Lien on Collateral securing a Priority Lien Obligation to a Lien securing another obligation of the Company or other Person that is permitted under the Priority Lien Documents as in effect on the date hereof or securing a DIP Financing, or the subordination of a Lien on Collateral securing a Second Lien Obligation to a Lien securing another obligation of the Company or other Person (other than a Priority Lien Obligation) that is permitted under the Second Lien Documents as in effect on the date hereof, each of the Second Lien Collateral Trustee, on behalf of itself and the other Second Lien Secured Parties, and the Third Lien Collateral Agent, on behalf of itself and the other Third Lien Secured Parties, hereby agrees that (i) any Priority Lien on any Collateral now or hereafter held by or for the benefit of any Priority Lien Secured Party shall be senior in right, priority, operation, effect and all other respects to (A) any and all Second Liens on any Collateral, in any case, subject to the Priority Lien Cap as provided herein and (B) any and all Third Liens on any Collateral, (ii) any Second Lien on any Collateral now or hereafter held by or for the benefit of any Second Lien Secured Party shall be (A) junior and subordinate in right, priority, operation, effect and all other respects to any and all Priority Liens on any Collateral, in any case, subject to the Priority Lien Cap as provided herein and (B) senior in right, priority, operation, effect and all other respects to any and all Third Liens on any Collateral and (iii) any Third Lien on any Collateral now or hereafter held by or for the benefit of any Third Lien Secured Party shall be junior and subordinate in right, priority, operation, effect and all other respects to (A) any and all Priority Liens on any Collateral and (B) any and all Second Liens on any Collateral.

(c) It is acknowledged that (x) subject to the Priority Lien Cap (as provided herein), (i) the aggregate amount of the Priority Lien Obligations may be increased from time to time pursuant to the terms of the Priority Lien Documents, (ii) a portion of the Priority Lien Obligations consists or may consist of indebtedness that is revolving in nature, and the amount thereof that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, and (iii) (A) the Priority Lien Documents may be replaced, restated, supplemented, restructured or otherwise amended or modified from time to time and (B) the Priority Lien Obligations may be increased, extended, renewed, replaced, restated, supplemented, restructured, repaid, refunded, refinanced or otherwise amended or modified from time to time, in the case of the foregoing clauses (A) and (B) all without affecting the subordination of the Second Liens or Third Liens hereunder or the provisions of this Agreement defining the relative rights of the Priority Lien Secured Parties, the Second Lien Secured Parties and the Third Lien Secured Parties and (y) (i) the aggregate amount of the Second Lien Obligations may be increased from time to time pursuant to the terms of the Second Lien Documents, and (ii) (A) the Second Lien Documents may be replaced, restated, supplemented, restructured or otherwise amended or modified from time to time and (B) the Second Lien Obligations may be increased, extended, renewed, replaced, restated, supplemented, restructured, repaid, refunded, refinanced or otherwise amended or modified from time to time, in the case of the foregoing clauses (A) and (B) all without affecting the subordination of the Third Liens hereunder or the provisions of this Agreement defining the relative rights of the Priority Lien Secured Parties, the Second Lien Secured Parties and the Third Lien Secured Parties. The Lien priorities provided for herein shall not be altered or otherwise affected by any amendment, modification, supplement, extension, increase, renewal, restatement or Replacement of either the Priority Lien Obligations (or any part thereof), the Second Lien Obligations (or any part thereof) or the Third Lien Obligations (or any part thereof), by the release of any Collateral or of any guarantees for any Priority Lien Obligations or by any action that any Secured Debt Representative or Secured Party may take or fail to take in respect of any Collateral.

SECTION 2.02 Prohibition on Marshalling, Etc.

(a) Until the Discharge of Priority Lien Obligations, the Second Lien Collateral Trustee and the Second Lien Secured Parties agree that they will not (and, until the Discharge of Priority Lien Obligations, hereby waives any right to) assert any marshalling, appraisal, valuation, or other similar right that may otherwise be available to a junior secured creditor.

(b) Until the Discharge of Priority Lien Obligations and the Discharge of Second Lien Obligations, the Third Lien Collateral Agent and the Third Lien Secured Parties agree that they will not (and each hereby waives any right to) assert any marshalling, appraisal, valuation, or other similar right that may otherwise be available to a junior secured creditor.

SECTION 2.03 No New Liens. The parties hereto agree that, (a) so long as the Discharge of Priority Lien Obligations has not occurred, none of the Grantors shall, nor shall any Grantor permit any of its subsidiaries to, (i) grant or permit any additional Liens on any asset of a Grantor to secure any Third Lien Obligation, or take any action to perfect any additional Liens, unless it has granted, or substantially concurrently therewith grants (or offers to grant), a Lien on such asset of such Grantor to secure (A) the Priority Lien Obligations and has taken all actions

required to perfect such Liens and (B) the Second Lien Obligations and has taken all actions required to perfect such Liens; provided, however, the refusal or inability of the Priority Lien Agent or the Second Lien Collateral Trustee to accept such Lien will not prevent the Third Lien Collateral Agent from taking the Lien, (ii) grant or permit any additional Liens on any asset of a Grantor to secure any Second Lien Obligation, or take any action to perfect any additional Liens, unless it has granted, or substantially concurrently therewith grants (or offers to grant), a Lien on such asset of such Grantor to secure (A) the Priority Lien Obligations and has taken all actions required to perfect such Liens and (B) the Third Lien Obligations and has taken all actions required to perfect such Liens; provided, however, the refusal or inability of the Priority Lien Agent or the Third Lien Collateral Agent to accept such Lien will not prevent the Second Lien Collateral Trustee from taking the Lien or (iii) grant or permit any additional Liens on any asset of a Grantor to secure any Priority Lien Obligation, or take any action to perfect any additional Liens, unless it has granted, or substantially concurrently therewith grants (or offers to grant), a Lien on such asset of such Grantor to secure (A) the Second Lien Obligations and has taken all actions required to perfect such Liens and (B) the Third Lien Obligations and has taken all actions required to perfect such Liens; provided, however, the refusal or inability of the Second Lien Collateral Trustee or the Third Lien Collateral Agent to accept such Lien will not prevent the Priority Lien Agent from taking the Lien and (b) after the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, none of the Grantors shall, nor shall any Grantor permit any of its subsidiaries to, (i) grant or permit any additional Liens on any asset of a Grantor to secure any Second Lien Obligation, or take any action to perfect any additional Liens, unless it has granted, or substantially concurrently therewith grants (or offers to grant), a Lien on such asset of such Grantor to secure the Third Lien Obligations and has taken all actions required to perfect such Liens; provided, however, the refusal or inability of the Third Lien Collateral Agent to accept such Lien will not prevent the Second Lien Collateral Trustee from taking the Lien or (ii) grant or permit any additional Liens on any asset of a Grantor to secure any Third Lien Obligations unless it has granted, or substantially concurrently therewith grants (or offers to grant), a Lien on such asset of a Grantor to secure the Second Lien Obligations and has taken all actions required to perfect such Liens; provided, however, the refusal or inability of the Second Lien Collateral Trustee to accept such Lien will not prevent the Third Lien Collateral Agent from taking the Lien, with each such Lien as described in clauses (a) and (b) of this Section 2.03 to be subject to the provisions of this Agreement. To the extent that the provisions of the immediately preceding sentence are not complied with for any reason, without limiting any other right or remedy available to the Priority Lien Agent, the other Priority Lien Secured Parties, the Second Lien Collateral Trustee or the other Second Lien Secured Parties, each of the Second Lien Collateral Trustee, for itself and on behalf of the other Second Lien Secured Parties and the Third Lien Collateral Agent, for itself and on behalf of the other Third Lien Secured Parties, agrees that any amounts received by or distributed to any Second Lien Secured Party or Third Lien Secured Party, as applicable, pursuant to or as a result of any Lien granted in contravention of this Section 2.03 shall be subject to Section 3.05(b).

SECTION 2.04 Similar Collateral and Agreements. The parties hereto acknowledge and agree that it is their intention that the Priority Lien Collateral, the Second Lien Collateral and the Third Lien Collateral be identical. In furtherance of the foregoing, the parties hereto agree (a) to cooperate in good faith in order to determine, upon any reasonable request by the Priority Lien Agent, the Second Lien Collateral Trustee or the Third Lien Collateral Agent, the specific assets included in the Priority Lien Collateral, the Second Lien Collateral and the

Third Lien Collateral, the steps taken to perfect the Priority Liens, the Second Liens and the Third Liens thereon and the identity of the respective parties obligated under the Priority Lien Documents, the Second Lien Documents and the Third Lien Documents in respect of the Priority Lien Obligations, the Second Lien Obligations and the Third Lien Obligations, respectively, (b) that the Second Lien Security Documents creating Liens on the Collateral shall be in all material respects the same forms of documents as the respective Priority Lien Security Documents creating Liens on the Collateral other than (i) with respect to the priority nature of the Liens created thereunder in such Collateral, (ii) such other modifications to such Second Lien Security Documents which are less restrictive than the corresponding Priority Lien Security Documents, (iii) provisions in the Second Lien Security Documents which are solely applicable to the rights and duties of the Second Lien Collateral Trustee or the other Second Lien Secured Parties, and (iv) with such deletions or modifications of representations, warranties and covenants as are customary with respect to security documents establishing Liens securing debt securities sold in similar private transactions that are not subject to the registration requirements of the Securities Act, (c) that the Third Lien Security Documents creating Liens on the Collateral shall be in all material respects the same forms of documents as the respective Priority Lien Security Documents and Second Lien Security Documents creating Liens on the Collateral other than (i) with respect to the priority nature of the Liens created thereunder in such Collateral, (ii) such other modifications to such Third Lien Security Documents which are less restrictive than the corresponding Priority Lien Security Documents and Second Lien Security Documents, (iii) provisions in the Third Lien Security Documents which are solely applicable to the rights and duties of the Third Lien Collateral Agent and the other Third Lien Secured Parties, and (iv) with such deletions or modifications of representations, warranties and covenants as are customary with respect to security documents establishing Liens securing debt securities sold in similar private transactions that are not subject to the registration requirements of the Securities Act, (d) that at no time shall there be any Grantor that is an obligor in respect of the Second Lien Obligations that is not also an obligor in respect of the Priority Lien Obligations and (e) that at no time shall there be any Grantor that is an obligor in respect of the Third Lien Obligations that is not also an obligor in respect of the Priority Lien Obligations and the Second Lien Obligations.

SECTION 2.05 No Duties of Priority Lien Agent. Each of the Second Lien Collateral Trustee, for itself and on behalf of each Second Lien Secured Party, and the Third Lien Collateral Agent, for itself and on behalf of each Third Lien Secured Party, acknowledges and agrees that neither the Priority Lien Agent nor any other Priority Lien Secured Party shall have any duties or other obligations to any such Second Lien Secured Party or Third Lien Secured Party with respect to any Collateral, other than to transfer to the Second Lien Collateral Trustee any remaining Collateral and any proceeds of the sale or other Disposition of any such Collateral remaining in its possession following the associated Discharge of Priority Lien Obligations, in each case without recourse, representation or warranty on the part of the Priority Lien Agent or any Priority Lien Secured Party. In furtherance of the foregoing, each Second Lien Secured Party and Third Lien Secured Party acknowledges and agrees that until the Discharge of Priority Lien Obligations (subject to the terms of Section 3.02, including the rights of the Second Lien Secured Parties and the Third Lien Secured Parties following the expiration of any applicable Standstill Period), the Priority Lien Agent shall be entitled, for the benefit of the Priority Lien Secured Parties, to sell, transfer or otherwise Dispose of or deal with such Collateral, as provided herein and in the Priority Lien Documents, without regard to (a) any Second Lien or any rights to which the Second Lien Collateral Trustee or any Second Lien

Secured Party would otherwise be entitled as a result of such Second Lien or (b) any Third Lien or any rights to which the Third Lien Collateral Agent or any Third Lien Secured Party would otherwise be entitled as a result of such Third Lien. Without limiting the foregoing, each of the Second Lien Collateral Trustee, for itself and on behalf of each Second Lien Secured Party, and the Third Lien Collateral Agent, for itself and on behalf of each Third Lien Secured Party agrees that neither the Priority Lien Agent nor any other Priority Lien Secured Party shall have any duty or obligation to first appraise or value any of the Collateral, or marshal or realize upon any type of Collateral, or to sell, Dispose of or otherwise liquidate all or any portion of such Collateral, in any manner that would maximize the return to the Second Lien Secured Parties or the Third Lien Secured Parties, notwithstanding that the order and timing of any such realization, sale, Disposition or liquidation may affect the amount of proceeds actually received by the Second Lien Secured Parties or the Third Lien Secured Parties, as applicable, from such realization, sale, Disposition or liquidation. Following the Discharge of Priority Lien Obligations, the Second Lien Collateral Trustee and the other Second Lien Secured Parties may, subject to any other agreements binding on the Second Lien Collateral Trustee or such other Second Lien Secured Parties, assert their rights under the New York UCC or otherwise to any proceeds remaining following a sale, Disposition or other liquidation of Collateral by, or on behalf of the Second Lien Secured Parties. Each of the Second Lien Collateral Trustee, for itself and on behalf of each Second Lien Secured Party, and the Third Lien Collateral Agent, for itself and on behalf of each Third Lien Secured Party, hereby waives any claim any Second Lien Secured Party or any Third Lien Secured Party may now or hereafter have against the Priority Lien Agent or any other Priority Lien Secured Party arising out of any actions which the Priority Lien Agent or any other Priority Lien Secured Parties take or omit to take (including actions with respect to the creation, perfection or continuation of Liens on any Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any of the Collateral, and actions with respect to the collection of any claim for all or any part of the Priority Lien Obligations from any account debtor, guarantor or any other party) in accordance with this Agreement and the Priority Lien Documents or the valuation, use, protection or release of any security for the Priority Lien Obligations.

SECTION 2.06 No Duties of Second Lien Collateral Trustee. The Third Lien Collateral Agent, for itself and on behalf of each Third Lien Secured Party, acknowledges and agrees that neither the Second Lien Collateral Trustee nor any other Second Lien Secured Party shall have any duties or other obligations to such Third Lien Secured Party with respect to any Collateral, other than to transfer to the Third Lien Collateral Agent any remaining Collateral and any proceeds of the sale or other Disposition of any such Collateral remaining in its possession following the associated Discharge of Second Lien Obligations (provided such Discharge of Second Lien Obligations occurs after the Discharge of Priority Lien Obligations), in each case without representation or warranty on the part of the Second Lien Collateral Trustee or any Second Lien Secured Party. In furtherance of the foregoing, the Third Lien Collateral Agent, for itself and on behalf of each Third Lien Secured Party acknowledges and agrees that after the Discharge of Priority Lien Obligations and until the Discharge of Second Lien Obligations (subject to the terms of Section 3.02, including the rights of the Third Lien Secured Parties following expiration of the Third Lien Second Standstill Period), the Second Lien Collateral Trustee shall be entitled, for the benefit of the Second Lien Secured Parties, to sell, transfer or otherwise Dispose of or deal with such Collateral, as provided herein and in the Second Lien Documents, without regard to any Third Lien or any rights to which the Third Lien Collateral

Agent or any Third Lien Secured Party would otherwise be entitled as a result of such Third Lien. Without limiting the foregoing, the Third Lien Collateral Agent, for itself and on behalf of each Third Lien Secured Party, agrees that neither the Second Lien Collateral Trustee nor any other Second Lien Secured Party shall have any duty or obligation first to marshal or realize upon any type of Collateral, or to sell, Dispose of or otherwise liquidate all or any portion of such Collateral, in any manner that would maximize the return to the Third Lien Secured Parties, notwithstanding that the order and timing of any such realization, sale, Disposition or liquidation may affect the amount of proceeds actually received by the Third Lien Secured Parties from such realization, sale, Disposition or liquidation. Following the Discharge of Second Lien Obligations, the Third Lien Collateral Agent and the other Third Lien Secured Parties may, subject to any other agreements binding on the Third Lien Collateral Agent or such other Third Lien Secured Parties, assert their rights under the New York UCC or otherwise to any proceeds remaining following a sale, Disposition or other liquidation of Collateral by, or on behalf of the Third Lien Secured Parties. The Third Lien Collateral Agent, for itself and on behalf of each Third Lien Secured Party, hereby waives any claim any Third Lien Secured Party may now or hereafter have against the Second Lien Collateral Trustee or any other Second Lien Secured Party arising out of any actions which the Second Lien Collateral Trustee or the Second Lien Secured Parties take or omit to take (including actions with respect to the creation, perfection or continuation of Liens on any Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any of the Collateral, and actions with respect to the collection of any claim for all or any part of the Second Lien Obligations from any account debtor, guarantor or any other party) in accordance with this Agreement and the Second Lien Documents or the valuation, use, protection or release of any security for the Second Lien Obligations. The Priority Lien Agent, for itself and on behalf of each Priority Lien Secured Party, acknowledges and agrees that neither the Second Lien Collateral Trustee nor any other Second Lien Secured Party shall have any duties or other obligations to such Priority Lien Secured Party with respect to any Collateral, except as expressly set forth in this Agreement.

ARTICLE III

ENFORCEMENT RIGHTS; PURCHASE OPTION

SECTION 3.01 Limitation on Enforcement Action.

(a) Prior to the Discharge of Priority Lien Obligations, each of the Second Lien Collateral Trustee, for itself and on behalf of each Second Lien Secured Party, and the Third Lien Collateral Agent, for itself and on behalf of each Third Lien Secured Party, hereby agrees that, subject to Section 3.02, Section 3.05(b) and Section 4.07, none of the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Agent or any other Third Lien Secured Party shall commence any judicial or nonjudicial foreclosure proceedings with respect to, seek to have a trustee, receiver, liquidator or similar official appointed for or over, attempt any action to take possession of, exercise any right, remedy or power with respect to, or otherwise take any action to enforce its interest in or realize upon, or take any other action available to it in respect of, any Collateral under any Second Lien Security Document or Third Lien Security Document, as applicable, applicable law or otherwise (including but not limited to any right of setoff), it being agreed that only the Priority Lien Agent, acting in accordance with the applicable Priority Lien Documents, shall have the

exclusive right (and whether or not any Insolvency or Liquidation Proceeding has been commenced), to take any such actions or exercise any such remedies, in each case, without any consultation with or the consent of the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Agent or any other Third Lien Secured Party. In exercising rights and remedies with respect to the Collateral, the Priority Lien Agent and the other Priority Lien Secured Parties may enforce the provisions of the Priority Lien Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in their sole discretion and regardless of whether such exercise and enforcement is adverse to the interest of any Second Lien Secured Party or Third Lien Secured Party. Such exercise and enforcement shall include the rights of an agent appointed by them to Dispose of Collateral upon foreclosure, to incur expenses in connection with any such Disposition and to exercise all the rights and remedies of a secured creditor under the Uniform Commercial Code, the Bankruptcy Code or any other Bankruptcy Law (including, without limitation, the right to credit bid for all or a portion of the Collateral). Without limiting the generality of the foregoing, prior to the Discharge of Priority Lien Obligations, the Priority Lien Agent will have the exclusive right to deal with that portion of the Collateral consisting of deposit accounts and securities accounts (collectively "Accounts"), including exercising rights under control agreements with respect to such Accounts. Each of the Second Lien Collateral Trustee, for itself and on behalf of the other Second Lien Secured Parties and the Third Lien Collateral Agent, for itself and on behalf of the other Third Lien Secured Parties, hereby acknowledges and agrees that no covenant, agreement or restriction contained in any Second Lien Security Document, any other Second Lien Document, any Third Lien Security Document or any other Third Lien Document, as applicable, other than this Agreement, shall be deemed to restrict in any way the rights and remedies of the Priority Lien Agent or the other Priority Lien Secured Parties with respect to the Collateral as set forth in this Agreement. Notwithstanding the foregoing, subject to Section 3.05, each of the Second Lien Collateral Trustee, on behalf of the Second Lien Secured Parties, and the Third Lien Collateral Agent, on behalf of the Third Lien Secured Parties, may, but will have no obligation to, take all such actions (not adverse to the Priority Liens or the rights of the Priority Lien Agent and the Priority Lien Secured Parties) it deems necessary to perfect or continue the perfection of the Second Liens in the Collateral or to create, preserve or protect (but not enforce) the Second Liens in the Collateral or to perfect or continue the perfection of the Third Liens in the Collateral or to create, preserve or protect (but not enforce) the Third Liens in the Collateral, as applicable. Nothing herein shall limit the right or ability of the Second Lien Secured Parties or, if approved in writing in advance by the Second Lien Collateral Trustee (acting in accordance with the applicable Secured Loan Documents), any Third Lien Secured Parties to (i) purchase (by credit bid or otherwise) all or any portion of the Collateral in connection with any enforcement of remedies by the Priority Lien Agent to the extent that, and so long as, the Priority Lien Secured Parties receive payment in full in cash of all Priority Lien Obligations (other than the Excess Priority Lien Obligations, except as provided in Section 6.01) after giving effect thereto or (ii) file a proof of claim with respect to the Second Lien Obligations or the Third Lien Obligations, as applicable.

(b) Following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, the Third Lien Collateral Agent, for itself and on behalf of each Third Lien Secured Party, hereby agrees that, subject to Section 3.02, Section 3.05(b) and Section 4.07, neither the Third Lien Collateral Agent nor any other Third Lien Secured Party shall commence any judicial or nonjudicial foreclosure proceedings with respect to, seek to have

a trustee, receiver, liquidator or similar official appointed for or over, attempt any action to take possession of, exercise any right, remedy or power with respect to, or otherwise take any action to enforce its interest in or realize upon, or take any other action available to it in respect of, any Collateral under any Third Lien Security Document, applicable law or otherwise (including but not limited to any right of setoff), it being agreed that only the Second Lien Collateral Trustee, acting in accordance with the applicable Second Lien Documents, shall have the exclusive right (and whether or not any Insolvency or Liquidation Proceeding has been commenced), to take any such actions or exercise any such remedies, in each case, without any consultation with or the consent of the Third Lien Collateral Agent or any other Third Lien Secured Party. In exercising rights and remedies with respect to the Collateral, the Second Lien Collateral Trustee and the other Second Lien Secured Parties may enforce the provisions of the Second Lien Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in their sole discretion and regardless of whether such exercise and enforcement is adverse to the interest of any Third Lien Secured Party. Such exercise and enforcement shall include the rights of an agent appointed by them to Dispose of Collateral upon foreclosure, to incur expenses in connection with any such Disposition and to exercise all the rights and remedies of a secured creditor under the Uniform Commercial Code, the Bankruptcy Code or any other Bankruptcy Law (including, without limitation, the right to credit bid for all or a portion of the Collateral). Without limiting the generality of the foregoing, the Second Lien Collateral Trustee will have the exclusive right to deal with the Accounts, including exercising rights under control agreements with respect to such Accounts. The Third Lien Collateral Agent, for itself and on behalf of the other Third Lien Secured Parties, hereby acknowledges and agrees that no covenant, agreement or restriction contained in any Third Lien Security Document or any other Third Lien Document shall be deemed to restrict in any way the rights and remedies of the Second Lien Collateral Trustee or the other Second Lien Secured Parties with respect to the Collateral as set forth in this Agreement. Notwithstanding the foregoing, subject to Section 3.05, the Third Lien Collateral Agent may, but will have no obligation to, on behalf of the Third Lien Secured Parties, take all such actions (not adverse to the Second Liens or the rights of the Second Lien Collateral Trustee and the Second Lien Secured Parties) it deems necessary to perfect or continue the perfection of the Third Liens in the Collateral or to create, preserve or protect (but not enforce) the Third Liens in the Collateral.

SECTION 3.02 Standstill Periods; Permitted Enforcement Action.

(a) Prior to the Discharge of Priority Lien Obligations and notwithstanding the foregoing Section 3.01, both before and during an Insolvency or Liquidation Proceeding:

(i) after a period of 180 days has elapsed (which period will be tolled during any period in which the Priority Lien Agent is not entitled, on behalf of the Priority Lien Secured Parties, to enforce or exercise any rights or remedies with respect to any Collateral as a result of (A) any injunction issued by a court of competent jurisdiction or (B) the automatic stay or any other stay in any Insolvency or Liquidation Proceeding) since the date on which the Second Lien Collateral Trustee has delivered to the Priority Lien Agent written notice of an Event of Default under any Second Lien Document arising from the failure to pay any Second Lien Obligations or the acceleration of any Second Lien Debt (the "Second Lien Standstill Period"), the Second Lien Collateral Trustee and the other Second Lien Secured Parties may enforce or exercise any

rights or remedies with respect to any Collateral; provided, however that notwithstanding the expiration of the Second Lien Standstill Period or anything in the Second Lien Collateral Trust Agreement to the contrary, in no event may the Second Lien Collateral Trustee or any other Second Lien Secured Party enforce or exercise any rights or remedies with respect to any Collateral, or commence, join with any Person at any time in commencing, or petition for or vote in favor of any resolution for, any such action or proceeding, if the Priority Lien Agent on behalf of the Priority Lien Secured Parties or any other Priority Lien Secured Party shall have commenced, and shall be diligently pursuing (or shall have sought or requested relief from, or modification of, the automatic stay or any other stay or other prohibition in any Insolvency or Liquidation Proceeding to enable the commencement and pursuit thereof), the enforcement or exercise of any rights or remedies with respect to the Collateral or any such action or proceeding (prompt written notice thereof to be given to the Second Lien Representatives by the Priority Lien Agent); provided, further, that, at any time after the expiration of the Second Lien Standstill Period, if neither the Priority Lien Agent nor any other Priority Lien Secured Party shall have commenced and be diligently pursuing (or shall have sought or requested relief from, or modification of, the automatic stay or any other stay or other prohibition in any Insolvency or Liquidation Proceeding to enable the commencement and pursuit thereof) the enforcement or exercise of any rights or remedies with respect to any material portion of the Collateral or any such action or proceeding, and the Second Lien Collateral Trustee shall have commenced the enforcement or exercise of any rights or remedies with respect to any material portion of the Collateral or any such action or proceeding, then for so long as the Second Lien Collateral Trustee is diligently pursuing such rights or remedies, none of any Priority Lien Secured Party, the Priority Lien Agent, any Third Lien Secured Party or the Third Lien Collateral Agent shall take any action of a similar nature with respect to such Collateral, or commence, join with any Person at any time in commencing, or petition for or vote in favor of any resolution for, any such action or proceeding; and

(ii) after a period of 300 days has elapsed (which period will be tolled during any period in which the Priority Lien Agent is not entitled, on behalf of the Priority Lien Secured Parties, to enforce or exercise any rights or remedies with respect to any Collateral as a result of (A) any injunction issued by a court of competent jurisdiction or (B) the automatic stay or any other stay in any Insolvency or Liquidation Proceeding) since the date on which the Third Lien Collateral Agent has delivered to the Priority Lien Agent written notice of the acceleration of any Third Lien Debt or, if later, the last day of the Second Lien Standstill Period (the "Third Lien First Standstill Period"), the Third Lien Collateral Agent and the other Third Lien Secured Parties may enforce or exercise any rights or remedies with respect to any Collateral; provided, however that notwithstanding the expiration of the Third Lien First Standstill Period or anything in the Third Lien Collateral Trust Agreement to the contrary, in no event may the Third Lien Collateral Agent or any other Third Lien Secured Party enforce or exercise any rights or remedies with respect to any Collateral, or commence, join with any Person at any time in commencing, or petition for or vote in favor of any resolution for, any such action or proceeding, if (I) the Priority Lien Agent on behalf of the Priority Lien Secured Parties or any other Priority Lien Secured Party or (II) the Second Lien Collateral Trustee on behalf of the Second Lien Secured Parties or any other Second Lien Secured Party

shall have commenced, and shall be diligently pursuing (or shall have sought or requested relief from, or modification of, the automatic stay or any other stay or other prohibition in any Insolvency or Liquidation Proceeding to enable the commencement and pursuit thereof), the enforcement or exercise of any rights or remedies with respect to the Collateral or any such action or proceeding (prompt written notice thereof to be given to the Third Lien Representatives by the Priority Lien Agent or the Second Lien Collateral Trustee, as applicable); provided, further, that, at any time after the expiration of the Third Lien First Standstill Period, if none of any Priority Lien Secured Party, the Priority Lien Agent, any Second Lien Secured Party or the Second Lien Collateral Trustee shall have commenced and be diligently pursuing (or shall have sought or requested relief from, or modification of, the automatic stay or any other stay or other prohibition in any Insolvency or Liquidation Proceeding to enable the commencement and pursuit thereof) the enforcement or exercise of any rights or remedies with respect to any material portion of the Collateral or any such action or proceeding, and the Third Lien Collateral Agent shall have commenced the enforcement or exercise of any rights or remedies with respect to any material portion of the Collateral or any such action or proceeding, then for so long as the Third Lien Collateral Agent is diligently pursuing such rights or remedies, none of any Priority Lien Secured Party, the Priority Lien Agent, any Second Lien Secured Party or the Second Lien Collateral Trustee shall take any action of a similar nature with respect to such Collateral, or commence, join with any Person at any time in commencing, or petition for or vote in favor of any resolution for, any such action or proceeding.

(b) Following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations and notwithstanding the foregoing Section 3.01, both before and during an Insolvency or Liquidation Proceeding, after a period of 180 days has elapsed or, if later, the last day of the Second Lien Standstill Period (which period will be tolled during any period in which the Second Lien Collateral Trustee is not entitled, on behalf of the Second Lien Secured Parties, to enforce or exercise any rights or remedies with respect to any Collateral as a result of (A) any injunction issued by a court of competent jurisdiction or (B) the automatic stay or any other stay in any Insolvency or Liquidation Proceeding) since the date on which the Third Lien Collateral Agent has delivered to the Second Lien Collateral Trustee written notice of the acceleration of any Third Lien Debt (the "Third Lien Second Standstill Period"), the Third Lien Collateral Agent and the other Third Lien Secured Parties may enforce or exercise any rights or remedies with respect to any Collateral; provided, however that notwithstanding the expiration of the Third Lien Second Standstill Period or anything in the Third Lien Collateral Trust Agreement to the contrary, in no event may the Third Lien Collateral Agent or any other Third Lien Secured Party enforce or exercise any rights or remedies with respect to any Collateral, or commence, join with any Person at any time in commencing, or petition for or vote in favor of any resolution for, any such action or proceeding, if the Second Lien Collateral Trustee on behalf of the Second Lien Secured Parties or any other Second Lien Secured Party shall have commenced, and shall be diligently pursuing (or shall have sought or requested relief from, or modification of, the automatic stay or any other stay or other prohibition in any Insolvency or Liquidation Proceeding to enable the commencement and pursuit thereof), the enforcement or exercise of any rights or remedies with respect to the Collateral or any such action or proceeding (prompt written notice thereof to be given to the Third Lien Representatives by the Second Lien Collateral Trustee); provided, further, that, at any time after the expiration of

the Third Lien Second Standstill Period, if neither the Second Lien Collateral Trustee nor any other Second Lien Secured Party shall have commenced and be diligently pursuing (or shall have sought or requested relief from, or modification of, the automatic stay or any other stay or other prohibition in any Insolvency or Liquidation Proceeding to enable the commencement and pursuit thereof) the enforcement or exercise of any rights or remedies with respect to any material portion of the Collateral or any such action or proceeding, and the Third Lien Collateral Agent shall have commenced the enforcement or exercise of any rights or remedies with respect to any material portion of the Collateral or any such action or proceeding, then for so long as the Third Lien Collateral Agent is diligently pursuing such rights or remedies, neither any Second Lien Secured Party nor the Second Lien Collateral Trustee shall take any action of a similar nature with respect to such Collateral, or commence, join with any Person at any time in commencing, or petition for or vote in favor of any resolution for, any such action or proceeding.

(c) Second Lien Permitted Actions. Anything to the contrary in this Article III or in any other provision of this Agreement notwithstanding, Second Lien Collateral Trustee, any Second Lien Representative and /or any Second Lien Secured Party may, subject to the Second Lien Collateral Trust Agreement:

(i) if an Insolvency or Liquidation Proceeding has been commenced by or against any Grantor, file a claim or statement of interest with respect to the Second Lien Debt;

(ii) take any action (not adverse to the priority status of the Liens on the Collateral securing the Priority Lien Debt, or the rights of Priority Lien Agent or any other Priority Lien Secured Party to undertake enforcement actions with respect to the Collateral or otherwise) in order to create or perfect its Lien in and to the Collateral;

(iii) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding, or other pleading made by any person objecting to or otherwise seeking the disallowance of the claims of the Second Lien Secured Parties, including any claims secured by the Collateral, if any;

(iv) file any pleadings, objections, motions or agreements which assert rights or interests available to, or exercise rights as (to the extent not prohibited by Section 4.07), unsecured creditors of the Grantors arising under any Insolvency or Liquidation Proceeding or applicable non-bankruptcy law, in each case not inconsistent with the terms of this Agreement;

(v) vote on any plan of reorganization or liquidation and make any filings (including proofs of claim) and arguments and motions that are, in each case, not in contravention of the provisions of this Agreement, with respect to the Second Lien Debt and the Collateral;

(vi) seek to enforce any of the terms of the Second Lien Loan Documents to the extent not expressly prohibited by the terms of this Agreement;

(vii) join (but not exercise any control with respect to) any judicial foreclosure proceeding or other judicial Lien enforcement proceeding with respect to the Collateral initiated by Priority Lien Agent (or any Priority Lien Secured Parties) or by Third Lien Agent (or any Third Lien Secured Parties) to the extent that any such action could not reasonably be expected, in any material respect, to restrain, hinder, limit, delay for any material period or otherwise interfere with an enforcement action by Priority Lien Agent (it being understood that neither Second Lien Collateral Trustee nor any Second Lien Secured Party nor Third Lien Agent nor any Third Lien Secured Party shall be entitled to receive any proceeds of any Collateral unless otherwise expressly permitted herein);

(viii) bid for or purchase Collateral at any public, private or judicial foreclosure upon such Collateral initiated by Priority Lien Agent or any Priority Lien Secured Party, or any sale of Collateral during an Insolvency Proceeding; provided that such bid may only include a "credit bid" in respect of any Second Lien Debt to the extent that, and so long as, the Priority Lien Secured Parties receive payment in full in cash of all Priority Lien Obligations (other than the Excess Priority Lien Obligations) after giving effect thereto; and

(ix) take or otherwise exercise any enforcement actions after the expiration of the Second Lien Standstill Period to the extent specifically permitted in the second proviso to Section 3.02(a)(i) or with the consent of the Priority Lien Agent or as required by a court of competent jurisdiction.

SECTION 3.03 Insurance.

(a) Unless and until the Discharge of Priority Lien Obligations has occurred (subject to the terms of Section 3.02, including the rights of the Second Lien Secured Parties and the Third Lien Secured Parties following expiration of any applicable Standstill Period), the Priority Lien Agent shall have the sole and exclusive right, subject to the rights of the Grantors under the Priority Lien Documents, to adjust and settle claims in respect of Collateral under any insurance policy in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the Collateral. Unless and until the Discharge of Priority Lien Obligations has occurred, and subject to the rights of the Grantors under the Priority Lien Documents, all proceeds of any such policy and any such award (or any payments with respect to a deed in lieu of condemnation) in respect to the Collateral shall, subject to Section 6.01, be paid to the Priority Lien Agent pursuant to the terms of the Priority Lien Documents (including for purposes of cash collateralization of commitments, letters of credit and Hedging Obligations). If the Second Lien Collateral Trustee, any Second Lien Secured Party, the Third Lien Collateral Agent or any Third Lien Secured Party shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of the foregoing, it shall, subject to Section 6.01, pay such proceeds over to the Priority Lien Agent. In addition, if by virtue of being named as an additional insured or loss payee of any insurance policy of any Grantor covering any of the Collateral, the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Agent or any other Third Lien Secured Party shall have the right to adjust or settle any claim under any such insurance policy, then unless and until the Discharge of Priority Lien Obligations has occurred, the Second Lien Collateral Trustee, any such Second Lien Secured Party, the Third Lien Collateral Agent and any such Third Lien Secured Party shall, until the Discharge of

Priority Lien Obligations has occurred, follow the instructions of the Priority Lien Agent, or of the Grantors under the Priority Lien Documents to the extent the Priority Lien Documents grant such Grantors the right to adjust or settle such claims, with respect to such adjustment or settlement (subject to the terms of Section 3.02, including the rights of the Second Lien Secured Parties and the Third Lien Secured Parties following expiration of any applicable Standstill Period).

(b) Following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations (subject to the terms of Section 3.02, including the rights of the Third Lien Secured Parties following expiration of the Third Lien Second Standstill Period), the Second Lien Collateral Trustee shall have the sole and exclusive right, subject to the rights of the Grantors under the Second Lien Documents, to adjust and settle claims in respect of Collateral under any insurance policy in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the Collateral. Unless and until the Discharge of Second Lien Obligations has occurred, and subject to the rights of the Grantors under the Second Lien Documents, all proceeds of any such policy and any such award (or any payments with respect to a deed in lieu of condemnation) in respect to the Collateral shall, subject to Section 6.01, be paid to the Second Lien Collateral Trustee pursuant to the terms of the Second Lien Documents and, after the Discharge of Second Lien Obligations has occurred, to the Priority Lien Agent to the extent necessary to satisfy the requirements of Section 6.01(a)(iii) and, thereafter, the Third Lien Collateral Agent to the extent required under the Third Lien Documents and then, to the extent no Third Lien Obligations are outstanding, to the owner of the subject property, to such other Person as may be entitled thereto or as a court of competent jurisdiction may otherwise direct. If the Third Lien Collateral Agent or any Third Lien Secured Party shall, at any time following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, receive any proceeds of any such insurance policy or any such award or payment in contravention of the foregoing, it shall, subject to Section 6.01, pay such proceeds over to the Second Lien Collateral Trustee. In addition, if by virtue of being named as an additional insured or loss payee of any insurance policy of any Grantor covering any of the Collateral, the Third Lien Collateral Agent or any other Third Lien Secured Party shall have the right to adjust or settle any claim under any such insurance policy, then unless and until the Discharge of Second Lien Obligations has occurred, the Third Lien Collateral Agent and any such Third Lien Secured Party shall, until the Discharge of Second Lien Obligations has occurred, follow the instructions of the Second Lien Collateral Trustee, or of the Grantors under the Second Lien Documents to the extent the Second Lien Documents grant such Grantors the right to adjust or settle such claims, with respect to such adjustment or settlement (subject to the terms of Section 3.02, including the rights of the Third Lien Secured Parties following expiration of the Third Lien Second Standstill Period).

SECTION 3.04 Notification of Release of Collateral, Enforcement Action and Default.

(a) Each of the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Agent shall give the other Secured Debt Representatives prompt written notice of the Disposition by it of, and/or Release by it of the Lien on, any Collateral. Such notice shall describe in reasonable detail the subject Collateral, the parties involved in such Disposition or Release, the place, time, manner and method thereof, and the consideration, if any, received therefor; provided, however, that the failure to give any such notice shall not in and of itself in any way impair the effectiveness of any such Disposition or Release.

(b) Priority Lien Agent shall provide reasonable prior notice (and, in all events, not less than five Business Days) to Second Lien Collateral Trustee and to Third Lien Collateral Agent, and on a confidential basis, of its initial material enforcement action against the Collateral, other than any notice sent to a depository bank or the exercise of any set off rights. Second Lien Collateral Trustee shall provide reasonable prior notice (and, in all events, not less than five Business Days) to Priority Lien Agent (prior to the Discharge of Priority Lien Obligations) and to Third Lien Collateral Agent of its initial material enforcement action against the Collateral. Third Lien Collateral Agent shall provide reasonable prior notice (and, in all events, not less than five Business Days) to Priority Lien Agent (prior to the Discharge of Priority Lien Obligations) and to Second Lien Collateral Trustee (prior to the Discharge of Second Lien Obligations) of its initial material enforcement action against the Collateral. Notwithstanding the foregoing, (i) in no event shall the failure to deliver any notice required pursuant to this clause (b) affect the validity or enforceability of the applicable enforcement action for which notice should have been provided under this clause (b) and (ii) no party hereto shall object to or challenge (or have any right to object to or challenge), in a proceeding or otherwise, the validity or enforceability of such enforcement action as a result of the failure to deliver such notice.

(c) Each of the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Agent shall give the other Secured Debt Representatives prompt written notice (and, in all events, within 3 Business Days) of any Event of Default (in each case as defined in the applicable Secured Debt Documents) to the extent that notice of such Event of Default is being provided by such Secured Debt Representative (or any Secured Parties) to any Grantor; provided that, notwithstanding the foregoing, (i) in no event shall the failure to deliver any notice required pursuant to this clause (c) affect the ability of such Person responsible for delivery of such notice from exercising any rights or remedies available to it hereunder with respect to such Event of Default or the validity or enforceability of any such exercise of rights or remedies and (ii) no party hereto shall object to or challenge (or have any right to object to or challenge), in a proceeding or otherwise, the validity or enforceability of such exercise of rights or remedies as a result of the failure to deliver such notice.

SECTION 3.05 No Interference; Payment Over.

(a) No Interference.

(i) The Second Lien Collateral Trustee, for itself and on behalf of each Second Lien Secured Party, agrees that each Second Lien Secured Party (A) will not take or cause to be taken any action the purpose or effect of which is, or could be, to make any Second Lien *pari passu* with, or to give such Second Lien Secured Party any preference or priority relative to, any Priority Lien with respect to the Collateral or any part thereof, (B) will not (I) challenge or question in any proceeding the validity or enforceability of any Priority Lien Obligations or Priority Lien Document, or the validity or enforceability of the priorities, rights or duties established by the provisions of this

Agreement or (II) initiate a challenge or question in any proceeding the validity, attachment, perfection or priority of any Priority Lien, (C) will not take or cause to be taken any action the purpose or effect of which is to materially interfere, hinder or delay, in any manner, whether by judicial proceedings or otherwise, any sale, transfer or other Disposition of the Collateral by any Priority Lien Secured Party or the Priority Lien Agent acting on their behalf, (D) shall have no right to (I) direct the Priority Lien Agent or any other Priority Lien Secured Party to exercise any right, remedy or power with respect to any Collateral or (II) consent to the exercise by the Priority Lien Agent or any other Priority Lien Secured Party of any right, remedy or power with respect to any Collateral, (E) will not institute any suit or assert in any suit or Insolvency or Liquidation Proceeding any claim against the Priority Lien Agent or other Priority Lien Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise with respect to, and neither the Priority Lien Agent nor any other Priority Lien Secured Party shall be liable for, any action taken or omitted to be taken by the Priority Lien Agent or other Priority Lien Secured Party with respect to any Priority Lien Collateral, (F) will not seek (or support any party seeking), and hereby waives any right, to have any Collateral or any part thereof marshaled upon any foreclosure or other Disposition of such Collateral, (G) will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement, (H) will not object to forbearance by the Priority Lien Agent or any Priority Lien Secured Party, and (I) will not assert (or support any party asserting), and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or claim the benefit of any marshalling, appraisal, valuation or other similar right that may be available under applicable law with respect to the Collateral or any similar rights a junior secured creditor may have under applicable law; and

(ii) The Third Lien Collateral Agent, for itself and on behalf of each Third Lien Secured Party, agrees that each Third Lien Secured Party (A) will not take or cause to be taken any action the purpose or effect of which is, or could be, to make any Third Lien *pari passu* with, or to give such Third Lien Secured Party any preference or priority relative to, any Priority Lien or Second Lien with respect to the Collateral or any part thereof, (B) will not (I) challenge or question in any proceeding the validity or enforceability of any Priority Lien Obligations, Priority Lien Document, Second Lien Obligations or Second Lien Document, or the validity or enforceability of the priorities, rights or duties established by the provisions of this Agreement or (II) initiate a challenge or question in any proceeding the validity, attachment, perfection or priority of any Priority Lien or any Second Lien, (C) will not take or cause to be taken any action the purpose or effect of which is to materially interfere, hinder or delay, in any manner, whether by judicial proceedings or otherwise, any sale, transfer or other Disposition of the Collateral by any Priority Lien Secured Party or the Priority Lien Agent acting on their behalf or by any Second Lien Secured Party or the Second Lien Collateral Trustee acting on their behalf, (D) shall have no right to (I) direct the Priority Lien Agent, any other Priority Lien Secured Party, the Second Lien Collateral Trustee or any other Second Lien Secured Party to exercise any right, remedy or power with respect to any Collateral or (II) consent to the exercise by the Priority Lien Agent, any other Priority Lien Secured Party, the Second Lien Collateral Trustee or any other Second Lien Secured Party of any right, remedy or power with respect to any Collateral, (E) will not institute any suit or

assert in any suit or Insolvency or Liquidation Proceeding any claim against the Priority Lien Agent, any other Priority Lien Secured Party, the Second Lien Collateral Trustee or any other Second Lien Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise with respect to, and none of the Priority Lien Agent, any other Priority Lien Secured Party, the Second Lien Collateral Trustee or any other Second Lien Secured Party shall be liable for, any action taken or omitted to be taken by the Priority Lien Agent, any other Priority Lien Secured Party, the Second Lien Collateral Trustee or any other Second Lien Secured Party with respect to any Priority Lien Collateral or Second Lien Collateral, as applicable, (F) will not seek (or support any party seeking), and hereby waives any right, to have any Collateral or any part thereof marshaled upon any foreclosure or other Disposition of such Collateral, (G) will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement, (H) will not object to forbearance by the Priority Lien Agent, any Priority Lien Secured Party, the Second Lien Collateral Trustee or any Second Lien Secured Party and (I) will not assert (or support any party asserting), and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or claim the benefit of any marshalling, appraisal, valuation or other similar right that may be available under applicable law with respect to the Collateral or any similar rights a junior secured creditor may have under applicable law.

(b) Payment Over.

(i) Each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, and the Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, hereby agrees that if any Second Lien Secured Party or Third Lien Secured Party, as applicable, shall obtain possession of any Collateral or shall realize any proceeds or payment in respect of any Collateral (or any Second Lien Secured Party or Third Lien Secured Party shall receive any distribution of cash, property, or debt or equity securities in full or partial satisfaction or waiver of any of its claims against any Grantor in any Insolvency or Liquidation Proceeding), pursuant to the exercise of any rights or remedies with respect to the Collateral under any Second Lien Security Document or Third Lien Security Document, as applicable, or by the exercise of any rights available to it under applicable law or in any Insolvency or Liquidation Proceeding, at any time prior to the Discharge of Priority Lien Obligations secured by such Collateral, then it shall hold such Collateral, proceeds, distribution or payment in trust for the Priority Lien Agent and the other Priority Lien Secured Parties and transfer such Collateral, proceeds, distributions or payment, as the case may be, to the Priority Lien Agent as promptly as practicable. Furthermore, the Second Lien Collateral Trustee or the Third Lien Collateral Agent, as applicable, shall, at the Grantors' expense, promptly send written notice to the Priority Lien Agent upon receipt of such Collateral by any Second Lien Secured Party or Third Lien Secured Party, as applicable, proceeds or payment and if directed by the Priority Lien Agent within five (5) days after receipt by the Priority Lien Agent of such written notice, shall, to the extent consistent with Section 6.01(a), deliver such Collateral, proceeds or payment to the Priority Lien Agent in the same form as received, with any necessary endorsements, or as court of competent jurisdiction may otherwise direct. The Priority Lien Agent is hereby

authorized to make any such endorsements as agent for the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Agent or any other Third Lien Secured Party, as applicable. Each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, and the Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, agrees that if, at any time, it obtains written notice that all or part of any payment with respect to any Priority Lien Obligations previously made shall be rescinded for any reason whatsoever, it will, to the extent consistent with Section 6.01(a), promptly pay over to the Priority Lien Agent any payment received by it and then in its possession or under its direct control in respect of any such Priority Lien Collateral and shall, to the extent consistent with Section 6.01(a), promptly turn any such Collateral then held by it over to the Priority Lien Agent, and the provisions set forth in this Agreement will be reinstated as if such payment had not been made, until the Discharge of Priority Lien Obligations. All Second Liens and Third Liens will remain attached to and enforceable against all proceeds so held or remitted, subject to the priorities set forth in this Agreement. Notwithstanding anything to the contrary contained herein, this Section 3.05(b) shall not apply to any proceeds of Collateral realized in a transaction not prohibited by the Priority Lien Documents and as to which the possession or receipt thereof by the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Agent or any other Third Lien Secured Party, as applicable, is otherwise permitted by the Priority Lien Documents.

(ii) The Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, hereby agrees that if any Third Lien Secured Party shall obtain possession of any Collateral or shall realize any proceeds or payment in respect of any Collateral (or shall receive any distribution of cash, property, or debt or equity securities in full or partial satisfaction or waiver of any of its claims against any Grantor in any Insolvency or Liquidation Proceeding), pursuant to the exercise of any rights or remedies with respect to the Collateral under any Third Lien Security Document or by the exercise of any rights available to it under applicable law or in any Insolvency or Liquidation Proceeding, at any time following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations secured, or intended to be secured, by such Collateral, then it shall hold such Collateral, proceeds, distribution or payment in trust for the Second Lien Collateral Trustee and the other Second Lien Secured Parties and transfer such Collateral, proceeds, distribution or payment, as the case may be, to the Second Lien Collateral Trustee as promptly as practicable. Furthermore, the Third Lien Collateral Agent shall, at the Grantors' expense, promptly send written notice to the Second Lien Collateral Trustee upon receipt of such Collateral by any Third Lien Secured Party, proceeds or payment and if directed by the Second Lien Collateral Trustee within five (5) days after receipt by the Second Lien Collateral Trustee of such written notice, shall deliver such Collateral, proceeds or payment to the Second Lien Collateral Trustee in the same form as received, with any necessary endorsements, or as court of competent jurisdiction may otherwise direct. The Second Lien Collateral Trustee is hereby authorized to make any such endorsements as agent for the Third Lien Collateral Agent or any other Third Lien Secured Party. The Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, agrees that if, at any time, it obtains written notice that all or part of any payment with respect to any Second Lien

Obligations previously made shall be rescinded for any reason whatsoever, it will promptly pay over to the Second Lien Collateral Trustee any payment received by it and then in its possession or under its direct control in respect of any such Second Lien Collateral and shall promptly turn any such Collateral then held by it over to the Second Lien Collateral Trustee, and the provisions set forth in this Agreement will be reinstated as if such payment had not been made, until the Discharge of Second Lien Obligations. All Third Liens will remain attached to and enforceable against all proceeds so held or remitted, subject to the priorities set forth in this Agreement.

SECTION 3.06 Purchase Option.

(a) Notwithstanding anything in this Agreement to the contrary, on or at any time after (i) the commencement of an Insolvency or Liquidation Proceeding, (ii) the acceleration of the Priority Lien Obligations or the termination of any commitments under the Priority Credit Agreement (other than by the Company), (iii) the exercise or undertaking of any enforcement action, or rights of set-off, in respect of any Collateral by any Priority Lien Secured Parties under any Priority Lien Document, (iv) the occurrence of any default or event of default under any Priority Lien Document (or upon the effectiveness of any amendment, waiver, consent or modification of any Priority Lien Documents, which would prevent the occurrence of, or waive, any default or event of default under any Priority Lien Documents), (v) the delivery of any Priority Lien Release Notice or any failure of the Priority Lien Agent to deliver any required Priority Lien Release Notice in accordance with this Agreement, (vi) the proposal of any DIP Financing, (vii) the delivery of any Section 363 Notice or the occurrence of any Section 363 Event, or (viii) the occurrence of any default or termination event under an order approving the use of cash collateral of the Priority Lien Secured Parties or any order approving a DIP Financing provided by any of the Priority Lien Secured Parties, each of the holders of the Second Lien Debt and each of their respective Affiliates or designees (such holders and their respective Affiliates that make such election, the "Second Lien Purchasers") will have the several right, at their respective sole option and election (but will not be obligated) (provided that in the event of a conflicting or inconsistent exercise of such election by more than one Second Lien Purchaser, the ROFO Agent, in its sole discretion, shall determine which election(s) shall be valid and effective for purposes of this Section 3.06, it being understood that if Hamblin Watsa Investment Counsel Ltd. (or any its affiliates) shall have exercised such right at any time it shall have preference over any such right of any other Second Lien Purchasers) at any time upon prior written notice from (or on behalf of) the Second Lien Purchasers to the Priority Lien Agent, to purchase from the Priority Lien Secured Parties (A) all (but not less than all) Priority Lien Obligations (including unfunded commitments) other than any Priority Lien Obligations constituting Excess Priority Lien Obligations and (B) if applicable, all loans (and related obligations, including interest, fees and reasonable and documented expenses) provided by any of the Priority Lien Secured Parties in connection with a DIP Financing that are outstanding on the date of such purchase. Promptly following the receipt of such notice, the Priority Lien Agent will deliver to the Second Lien Representatives a statement of the amount of Priority Lien Debt, other Priority Lien Obligations (other than any Priority Lien Obligations constituting Excess Priority Lien Obligations) and DIP Financing (including interest, fees, expenses and other obligations in respect of such DIP Financing) provided by any of the Priority Lien Secured Parties, if any, then outstanding and the amount of the cash collateral requested by the Priority Lien Agent to be delivered pursuant to Section 3.06(b)(ii) below. The right to purchase provided

for in this Section 3.06 will expire unless, (1) within 20 Business Days after the receipt by the Second Lien Representatives of such statement of obligations from the Priority Lien Agent, any Second Lien Representative delivers to the Priority Lien Agent an irrevocable commitment of the Second Lien Purchasers to purchase (A) all (but not less than all) of the Priority Lien Obligations (including unfunded commitments) other than any Priority Lien Obligations constituting Excess Priority Lien Obligations and (B) if applicable, all loans (and related obligations, including interest, fees and expenses) provided by any of the Priority Lien Secured Parties in connection with a DIP Financing and to otherwise complete such purchase on the terms set forth under this Section 3.06, and (2) within an additional 10 Business Days, closes such purchases provided below.

(b) On the date specified by any Second Lien Representative (on behalf of the Second Lien Purchasers) in such irrevocable commitment (which shall not be less than five Business Days nor more than 15 Business Days, after the receipt by the Priority Lien Agent of such irrevocable commitment), the Priority Lien Secured Parties shall sell to the Second Lien Purchasers (i) all (but not less than all) Priority Lien Obligations (including unfunded commitments) other than any Priority Lien Obligations constituting Excess Priority Lien Obligations and (ii) if applicable, all loans (and related obligations, including interest, fees and expenses) provided by any of the Priority Lien Secured Parties in connection with a DIP Financing that are outstanding on the date of such sale, subject to any required approval of any Governmental Authority then in effect, if any, and only if on the date of such sale, the Priority Lien Agent receives the following:

(i) payment, as the purchase price for all Priority Lien Obligations sold in such sale, of an amount equal to the full amount of (i) all Priority Lien Obligations (other than outstanding letters of credit as referred to in clause (ii) below) other than any Priority Lien Obligations constituting Excess Priority Lien Obligations and (ii) if applicable, all loans (and related obligations, including interest, fees and expenses) provided by any of the Priority Lien Secured Parties in connection with a DIP Financing then outstanding (including principal, interest, fees, reasonable attorneys' fees and legal expenses, but excluding contingent indemnification obligations for which no claim or demand for payment has been made at or prior to such time); provided that in the case of Hedging Obligations that constitute Priority Lien Obligations the Second Lien Purchasers shall cause the applicable agreements governing such Hedging Obligations to be assigned and novated or, if such agreements have been terminated, such purchase price shall include an amount equal to the sum of any unpaid amounts then due in respect of such Hedging Obligations, calculated using the market quotation method and after giving effect to any netting arrangements;

(ii) a cash collateral deposit in such amount as the Priority Lien Agent determines is reasonably necessary to secure the payment of any outstanding letters of credit constituting Priority Lien Obligations that may become due and payable after such sale (but not in any event in an amount greater than one hundred five percent (105%) of the amount then reasonably estimated by the Priority Lien Agent to be the aggregate outstanding amount of such letters of credit at such time), which cash collateral shall be (A) held by the Priority Lien Agent as security solely to reimburse the issuers of such letters of credit that become due and payable after such sale and any fees and expenses

incurred in connection with such letters of credit and (B) returned to the Second Lien Collateral Trustee (except as may otherwise be required by applicable law or any order of any court or other Governmental Authority) promptly after the expiration or termination from time to time of all payment contingencies affecting such letters of credit (and, in all events, within 5 Business Days after Priority Lien Agent's knowledge of such expiration or termination); and

(iii) any customary agreements, documents or instruments which the Priority Lien Agent may reasonably request pursuant to which the applicable Second Lien Representatives (or any other representative appointed by the holders of a majority in aggregate principal amount of the Second Lien Debt then outstanding) and the Second Lien Purchasers in such sale expressly assume and adopt all of the obligations of the Priority Lien Agent and the Priority Lien Secured Parties under the Priority Lien Documents and in connection with loans (and related obligations, including interest, fees and expenses) provided by any of the Priority Lien Secured Parties in connection with a DIP Financing on and after the date of the purchase and sale and the applicable Second Lien Representatives (or any other representative appointed by the holders of a majority in aggregate principal amount of the Second Lien Debt then outstanding) becomes a successor agent thereunder.

(c) Such purchase of the Priority Lien Obligations (including unfunded commitments) and any loans provided by any of the Priority Lien Secured Parties in connection with a DIP Financing shall be made on a *pro rata* basis among the Second Lien Purchasers giving notice to the Priority Lien Agent of their interest to exercise the purchase option hereunder according to each such Second Lien Purchaser's portion of the Second Lien Debt outstanding on the date of purchase or such portion as such Second Lien Purchasers may otherwise agree among themselves. Such purchase price and cash collateral shall be remitted by wire transfer in federal funds to such bank account of the Priority Lien Agent as the Priority Lien Agent may designate in writing to the Second Lien Collateral Trustee for such purpose. Interest shall be calculated to but excluding the Business Day on which such sale occurs if the amounts so paid by the Second Lien Purchasers to the bank account designated by the Priority Lien Agent are received in such bank account prior to 12:00 noon, New York City time, and interest shall be calculated to and including such Business Day if the amounts so paid by the Second Lien Purchasers to the bank account designated by the Priority Lien Agent are received in such bank account later than 12:00 noon, New York City time.

(d) Such sale shall be expressly made without representation or warranty of any kind by the Priority Lien Secured Parties as to the Priority Lien Obligations, the Collateral or otherwise and without recourse to any Priority Lien Secured Party, except that the Priority Lien Secured Parties shall represent and warrant severally as to the Priority Lien Obligations (including unfunded commitments) and any loans provided by any of the Priority Lien Secured Parties in connection with a DIP Financing then owing to it: (i) that such applicable Priority Lien Secured Party own such Priority Lien Obligations (including unfunded commitments) and any loans provided by any of the Priority Lien Secured Parties in connection with a DIP Financing; and (ii) that such applicable Priority Lien Secured Party has the necessary corporate or other governing authority to assign such interests.

(e) After such sale becomes effective, the outstanding letters of credit will remain enforceable against the issuers thereof and will remain secured by the Priority Liens upon the Collateral in accordance with the applicable provisions of the Priority Lien Documents as in effect at the time of such sale, and the issuers of letters of credit will remain entitled to the benefit of the Priority Liens upon the Collateral and sharing rights in the proceeds thereof in accordance with the provisions of the Priority Lien Documents as in effect at the time of such sale, as fully as if the sale of the Priority Lien Debt had not been made, but only the Person or successor agent to whom the Priority Liens are transferred in such sale will have the right to foreclose upon or otherwise enforce the Priority Liens and only the Second Lien Purchasers in the sale will have the right to direct such Person or successor as to matters relating to the foreclosure or other enforcement of the Priority Liens.

(f) Each Grantor irrevocably consents to any assignment effected to one or more Second Lien Purchasers pursuant to this Section 3.06 (so long as they meet all eligibility standards contained in all relevant Priority Lien Documents, other than obtaining the consent of any Grantor to an assignment to the extent required by such Priority Lien Documents; provided, that for purposes of determining such eligibility standards Fairfax Financial Holdings Limited and its Affiliates and subsidiaries (other than, for the avoidance of doubt, the Company and its Subsidiaries) and ESAS and its Affiliates and Subsidiaries (other than, for the avoidance of doubt, the Company and its Subsidiaries) shall not be deemed to be Affiliates of the Company and shall, in all events, be deemed to meet all eligibility standards contained in all relevant Priority Lien Documents) for purposes of all Priority Lien Documents and hereby agrees that no further consent from such Grantor shall be required.

ARTICLE IV

OTHER AGREEMENTS

SECTION 4.01 Release of Liens; Automatic Release of Second Liens and Third Liens.

(a) Prior to the Discharge of Priority Lien Obligations, each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, and the Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, agrees that, in the event the Priority Lien Agent or the requisite Priority Lien Secured Parties under the Priority Lien Documents release the Priority Lien on any Collateral, each of the Second Lien and Third Lien on such Collateral shall terminate and be released (automatically and without further action) to the extent that (i) such release is permitted under the Second Lien Documents and the Third Lien Documents, as applicable, (ii) if the notice required by the penultimate sentence of this Section 4.01(a) has been provided (subject to the proviso therein), such release is effected in connection with the Priority Lien Agent's foreclosure upon, or other exercise of rights or remedies with respect to, such Collateral, or (iii) such release is effected in connection with a sale or other Disposition of any Collateral (or any portion thereof) under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code if the requisite Priority Lien Secured Parties under the Priority Lien Documents shall have consented to such sale or Disposition of such Collateral; provided that, in the case of each of clauses (i), (ii) and (iii), the Second Liens and Third Liens on such Collateral shall attach to (and shall remain

subject and subordinate to all Priority Liens securing Priority Lien Obligations, subject to the Priority Lien Cap and, in the case of the Third Liens, shall remain subject and subordinate to (I) all Priority Liens securing Priority Lien Obligations, subject to the Priority Lien Cap and (II) all Second Liens securing Second Lien Obligations) any proceeds of a sale, transfer or other Disposition of Collateral not paid to the Priority Lien Secured Parties or that remain after the Discharge of Priority Lien Obligations. The Priority Lien Agent agrees to give the Second Lien Collateral Trustee and the Third Lien Collateral Agent not less than 10 Business Days advance written notice of any proposed release pursuant to clauses (ii) and (iii) (other than pursuant to Section 363 or Section 1129 of the Bankruptcy Code) of this Section 4.01(b) (provided that such notice shall not be required to the extent extraordinary exigent circumstances shall arise that would irrevocably substantially impair the rights of the Priority Lien Secured Parties if such release were to be delayed by such 10 Business Day period) (each such notice, a "Priority Lien Release Notice"). Notwithstanding the foregoing in this Section 4.01(c), if the Second Lien Purchasers have exercised their purchase option (or have committed to exercise their purchase option) pursuant to Section 3.06(d), no release pursuant to clauses (ii) and (iii) of this Section 4.01(e) shall be permitted under this Section 4.01(b) to the extent (and only to the extent) that the Second Lien Purchasers shall not have defaulted on their obligations to consummate the purchase of the Priority Lien Debt and other amounts contemplated by Section 3.06(a).

(b) Following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, the Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, agrees that, in the event that the Second Lien Collateral Trustee or the requisite Second Lien Secured Parties under the Second Lien Documents release the Second Lien on any Collateral, the Third Lien on such Collateral shall terminate and be released automatically and without further action if (i) such release is permitted under the Third Lien Documents, (ii) such release is effected in connection with the Second Lien Collateral Trustee's foreclosure upon, or other exercise of rights or remedies with respect to, such Collateral, or (iii) such release is effected in connection with a sale or other Disposition of any Collateral (or any portion thereof) under Section 363 or Section 1129 of the Bankruptcy Code or any other provision of the Bankruptcy Code if the requisite Second Lien Secured Parties under the Second Lien Documents shall have consented to such sale or Disposition of such Collateral; provided that, in the case of each of clauses (i), (ii) and (iii), the Third Liens on such Collateral shall attach to (and shall remain subject and subordinate to all Second Liens securing Second Lien Obligations) any proceeds of a sale, transfer or other Disposition of Collateral not paid to the Second Lien Secured Parties or that remain after the Discharge of Second Lien Obligations.

(c) Upon the receipt of an Officers' Certificate or any corresponding provision of the Third Lien Collateral Trust Agreement, each of the Second Lien Collateral Trustee and the Third Lien Collateral Agent agrees to execute and deliver (at the sole cost and expense of the Grantors) all such releases and other instruments as shall reasonably be requested by the Priority Lien Agent or the Second Lien Collateral Trustee, as applicable, to evidence and confirm any release of Collateral provided for in this Section 4.01.

SECTION 4.02 Certain Agreements With Respect to Insolvency or Liquidation Proceedings.

(a) The parties hereto, which for avoidance of doubt includes the Grantors, acknowledge that this Agreement is a "subordination agreement" under Section 510(a) of the Bankruptcy Code and shall continue in full force and effect, notwithstanding the commencement of any Insolvency or Liquidation Proceeding by or against the Company or any of its subsidiaries. All references in this Agreement to the Company or any of its subsidiaries or any other Grantor will include such Person or Persons as a debtor-in-possession and any receiver or trustee for such Person or Persons in an Insolvency or Liquidation Proceeding. For the purposes of this Section 4.02, unless otherwise expressly provided herein, clauses (b) through and including (o) shall be in full force and effect prior to the Discharge of Priority Lien Obligations and clauses (g) and (p) through and including (cc) shall be in full force and effect prior to the Discharge of Second Lien Obligations.

(b) If the Company or any of its subsidiaries shall become subject to any Insolvency or Liquidation Proceeding and shall, as debtor(s)-in-possession, or if any receiver or trustee for such Person or Persons shall, move for approval of financing ("DIP Financing") to be provided by one or more lenders, which may include the Priority Lien Secured Parties (with respect to a DIP Financing prior to the Discharge of the Priority Lien Obligations), or the Second Lien Representatives or Second Lien Secured Parties (which, for any DIP Financing proposed prior to the Discharge of the Priority Lien Obligations, shall be a Permitted Junior DIP Financing or a DIP Financing consented to by the Priority Lien Secured Parties) (the "DIP Lenders") under Section 364 of the Bankruptcy Code or the use of cash collateral under Section 363 of the Bankruptcy Code, (i) the Second Lien Collateral Trustee, for itself and on behalf of each Second Lien Secured Party, agrees that neither it nor any other Second Lien Secured Party and (ii) the Third Lien Collateral Agent, for itself and on behalf of each Third Lien Secured Party, agrees that neither it nor any other Third Lien Secured Party, will raise any objection, contest or oppose, and each Second Lien Secured Party and Third Lien Secured Party will waive any claim such Person may now or hereafter have, to any such financing or to the Liens on the Collateral securing the same ("DIP Financing Liens"), or to any use, sale or lease of cash collateral that constitutes Collateral or to any grant of administrative expense priority under Section 364 of the Bankruptcy Code, unless (A) the Priority Lien Agent or the Priority Lien Secured Parties oppose or object to such DIP Financing or cash collateral use or such DIP Financing Liens, (B) the maximum principal amount of indebtedness permitted under such DIP Financing exceeds the sum of (I) the amount of Priority Lien Obligations which shall be refinanced with the proceeds thereof (not including the amount of any Excess Priority Lien Obligations) and (II) $100,000,000, (C) the terms of such DIP Financing (I) provide for the sale or disposition of a substantial part of the Collateral and a Discharge of Priority Lien Obligations is not effected substantially contemporaneously with such sale or disposition or (II) require the confirmation of a plan of reorganization or liquidation containing specific terms or provisions other than repayment in cash of such DIP Financing on the effective date thereof or a Discharge of Priority Lien Obligations on the effective date thereof, (D) the terms of the proposed DIP Financing are not commercially reasonable under the circumstances (as reasonably determined in good faith by the Board of Directors of the Borrower), (E) the Second Lien Secured Parties or the Third Lien Secured Parties are not permitted to seek adequate protection to the extent permitted by Section 4.02(f) or (F) such DIP Financing directly or indirectly provides for, or has the effect of providing for, the payment (whether in cash or otherwise) of any Excess Priority Lien Obligations prior to the Discharge of the Second Lien Obligations. To the extent such DIP Financing Liens are senior to, or rank *pari passu* with, the Priority Liens, (1) the Second Lien

Collateral Trustee will, for itself and on behalf of the other Second Lien Secured Parties, subordinate the Second Liens on the Collateral to the Priority Liens and to such DIP Financing Liens, so long as the Second Lien Collateral Trustee, on behalf of the Second Lien Secured Parties, retains Liens on all the Collateral, including proceeds thereof arising after the commencement of any Insolvency or Liquidation Proceeding, with the same priority relative to the Priority Liens and the Third Liens as existed prior to the commencement of the case under the Bankruptcy Code and (2) the Third Lien Collateral Agent will, for itself and on behalf of the other Third Lien Secured Parties, subordinate the Third Liens on the Collateral to the Priority Liens, the Second Liens and to such DIP Financing Liens, so long as the Third Lien Collateral Agent, on behalf of the Third Lien Secured Parties, retains Liens on all the Collateral, including proceeds thereof arising after the commencement of any Insolvency or Liquidation Proceeding, with the same priority relative to the Priority Liens and the Second Liens as existed prior to the commencement of the case under the Bankruptcy Code. All Liens granted to Priority Lien Agent or Second Lien Collateral Trustee or Third Lien Collateral Agent in any Insolvency Proceeding, whether as adequate protection or otherwise, are intended by the parties to be and shall be deemed to be subject to the Lien priorities in Section 2.01 and the other terms and conditions of this Agreement. Notwithstanding anything in this Section 4.02(b) to the contrary, nothing shall preclude (i) the Priority Lien Secured Parties from proposing a DIP Financing or objecting to or opposing any DIP Financing on the basis that they are willing to provide a DIP Financing, and (ii) nothing shall preclude the Second Lien Representatives or Second Lien Secured Parties from proposing a Permitted Junior DIP Financing or objecting to or opposing any DIP Financing on the basis that they are willing to provide a Permitted Junior DIP Financing.

(c) Prior to the Discharge of Priority Lien Obligations, without the consent of the Priority Lien Agent and the Second Lien Collateral Agent, in their respective sole discretion, the Third Lien Collateral Agent, for itself and on behalf of each Third Lien Secured Party, in each case, agrees not to propose, support or enter into any DIP Financing. Prior to the Discharge of the Priority Lien Obligations, each of the Priority Lien Agent, for itself and on behalf of each of the Priority Lien Secured Parties, agrees that the Second Lien Representatives and Second Lien Secured Parties shall be entitled to propose to any Grantor a DIP Financing that (i) provides for Liens that are junior in priority to the Liens securing the Priority Lien Obligations (but senior in priority to the Liens securing the Excess Priority Lien Obligations) and (ii) permits the Priority Lien Secured Parties to seek adequate protection as set forth in Section 4.02 (a "Permitted Junior DIP Financing"), without the consent of the Priority Lien Collateral Agent or any Priority Lien Secured Party. The Third Lien Collateral Trustee agrees, for itself and on behalf of each Third Lien Secured Party, that the Second Lien Representatives and the Second Lien Secured Parties shall be entitled to provide any Grantor with DIP Financing (a "Second Lien DIP Financing") that is secured by Liens equal or senior in priority to the Liens securing any Second Lien Debt and Third Lien Debt, without the consent of the Third Lien Collateral Trustee or any Third Lien Secured Party, and that it will raise no objection to and will consent to any such Second Lien DIP Financing.

(d) Each of the Second Lien Collateral Trustee, for itself and on behalf of each Second Lien Secured Party and the Third Lien Collateral Agent, for itself and on behalf of each Third Lien Secured Party, agrees that it will not object to, oppose or contest (or join with or support any third party objecting to, opposing or contesting) ("Section 363 Objections") a sale or other Disposition, a motion to sell or Dispose or the bidding procedure for such sale or

Disposition of any Collateral (or any portion thereof) under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code (any such sale or motion, a "Section 363 Event" and any notice or ruling issued by a court of competent jurisdiction in respect of such Section 363 Event, a "Section 363 Notice") if (1) the requisite Priority Lien Secured Parties under the Priority Lien Documents shall have consented to such sale or Disposition, such motion to sell or Dispose or such bidding procedure for such sale or Disposition of such Collateral, and (2) all Priority Liens, Second Liens and Third Liens will attach to the proceeds of the sale in the same respective priorities as set forth in this Agreement. Notwithstanding the foregoing in this Section 4.02(d), if the Second Lien Purchasers have exercised their purchase option (or have committed to exercise their purchase option) pursuant to Section 3.06(a), Section 363 Objections shall be permitted to be made by the Second Lien Collateral Trustee or any Second Lien Secured Party.

(e) Each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party and the Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, waives any claim that may be had against the Priority Lien Agent or any other Priority Lien Secured Party arising out of any DIP Financing Liens (that is granted in a manner that is consistent with this Agreement) or administrative expense priority under Section 364 of the Bankruptcy Code. The Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, waives any claim that may be had against the Second Lien Collateral Trustee or any other Second Lien Secured Party arising out of any DIP Financing Liens (that is granted in a manner that is consistent with this Agreement) or administrative expense priority under Section 364 of the Bankruptcy Code.

(f) The Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, agrees that neither the Second Lien Collateral Trustee nor any other Second Lien Secured Party and the Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, agrees that neither the Third Lien Collateral Agent nor any other Third Lien Secured Party, will, in any Insolvency or Liquidation Proceeding, accept or retain any form of adequate protection unless they are expressly permitted to seek and obtain such adequate protection by this Section 4.02(f) (or file or prosecute any motion for adequate protection (or any comparable request for relief)) based upon their interest in the Collateral, nor object to, oppose or contest (or join with or support any third party objecting to, opposing or contesting) (i) any request by the Priority Lien Agent or any other Priority Lien Secured Party for adequate protection in the form of (w) mandatory prepayments of cash proceeds from the Disposition of any Oil and Gas Properties in excess of $1,000,000 other than Hydrocarbons produced in the ordinary course of business, (x) cash payments of scheduled interest under the Priority Lien Documents at the then applicable non-default rate set forth in the Priority Lien Documents, except to the extent relating to Excess Priority Lien Obligations, (y) payment of reasonable fees and expenses under the Priority Lien Documents and the payment of any regularly scheduled required payments in respect of necessary Hedging Obligations (which payments shall, for the avoidance of doubt, exclude any termination payments in respect of such Hedging Obligations), (z) any additional or replacement liens, including liens on the Collateral, provided that the Liens of the Second Lien Secured Parties and Third Lien Secured Parties maintain the same relative priority with respect to the Priority Liens as existed prior to the commencement of an Insolvency or Liquidation Proceeding and provided that to the extent that the Priority Lien Secured Parties receive adequate protection in the form of Liens on additional assets or property (not constituting Collateral), the Second Lien Secured Parties and the Third Lien Secured Parties receive Liens on

such additional assets and property with the same relative priority with respect to the Priority Liens as existing prior to the commencement of any Insolvency or Liquidation Proceeding, (ii) any objection by the Priority Lien Agent or any other Priority Lien Secured Party to any motion, relief, action or proceeding based on the Priority Lien Agent or Priority Lien Secured Parties claiming a lack of adequate protection, unless and to the extent such request seeks adequate protection other than the forms of adequate protection expressly permitted by Section 4.02 (f)(i) except that:

(A) the Second Lien Secured Parties may:

(I) subject to the terms of Section 2.03, freely seek and obtain relief granting adequate protection in the form of an additional or replacement Lien co-extensive in all respects with, but subordinated (as set forth in Section 2.01) to, and with the same relative priority to the Priority Liens and the Third Liens as existed prior to the commencement of the Insolvency or Liquidation Proceeding, all Liens granted in the Insolvency or Liquidation Proceeding to, or for the benefit of, the Priority Lien Secured Parties; and

(II) freely seek and obtain any relief upon a motion for adequate protection (or any comparable relief), without any condition or restriction whatsoever, at any time after the Discharge of Priority Lien Obligations; and

(B) the Third Lien Secured Parties may:

(I) subject to the terms of Section 2.03, if the Priority Lien Secured Parties and Second Lien Secured Parties are granted adequate protection in the form of an additional or replacement Lien (on existing or future assets of the Grantors) in connection with any DIP Financing or use of cash collateral, seek and obtain relief granting adequate protection in the form of an additional or replacement Lien co-extensive in all respects with, but subordinated (as set forth in Section 2.01) to, and with the same relative priority to the Priority Liens and the Second Liens as existed prior to the commencement of the Insolvency or Liquidation Proceeding, all Liens granted in the Insolvency or Liquidation Proceeding to, or for the benefit of, the Priority Lien Secured Parties and the Second Lien Secured Parties; and

(II) freely seek and obtain any relief upon a motion for adequate protection (or any comparable relief), without any condition or restriction whatsoever, at any time after the Discharge of Priority Lien Obligations and the Discharge of Second Lien Obligations.

(g) Separate Grants of Security and Separate Classification. Each of the Grantors, the Priority Lien Agent, on behalf of itself and each of the Priority Lien Secured Parties, the Second Lien Collateral Trustee, on behalf of itself and each of the Second Lien

Secured Parties, and the Third Lien Collateral Agent, on behalf of itself and each of the Third Lien Secured Parties, acknowledges and agrees that (i) the grants of Liens pursuant to the Priority Lien Documents, Second Lien Documents and Third Lien Documents constitute three separate and distinct grants of Liens and (ii) because of, among other things, their differing rights in the Collateral, the Priority Lien Debt, the Second Lien Debt and the Third Lien Debt are fundamentally different from one another and must be separately classified in any plan of reorganization or liquidation proposed or adopted in an Insolvency or Liquidation Proceeding.

(h) The Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, agrees that in any Insolvency or Liquidation Proceeding, neither the Second Lien Collateral Trustee nor any other Second Lien Secured Party and the Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, agrees that in any Insolvency or Liquidation Proceeding, neither the Third Lien Collateral Agent nor any other Third Lien Secured Party, shall propose, support or vote to accept any plan of reorganization or liquidation or disclosure statement of the Company or any other Grantor unless such plan (i) is accepted by the Class of Priority Lien Secured Parties in accordance with Section 1126(c) of the Bankruptcy Code or (ii) provides for the Discharge of Priority Lien Obligations (including all post-petition interest approved by the bankruptcy court, fees, costs, charges, expenses and cash collateralization of all letters of credit payable to the Priority Lien Secured Parties) on or before the effective date of such plan of reorganization or liquidation and is otherwise acceptable to the Priority Lien Agent in its sole discretion. The Priority Lien Agent agrees that it will support and not oppose or object to, and use its best reasonable efforts to cause all other Priority Lien Secured Parties to support, and not oppose or object to, any filed plan of reorganization or liquidation with respect to the Company or any other Grantor if such plan of reorganization or liquidation is supported by the Second Lien Representative and provides for the Discharge of Priority Lien Obligations (including all post-petition interest approved by the bankruptcy court, fees, costs, charges, expenses and cash collateralization of all letters of credit) on the effective date of such plan of reorganization or liquidation; provided, however, that the Priority Lien Agent's agreement notwithstanding, nothing herein shall preclude the Priority Lien Agent or any of the Priority Lien Secured Parties from opposing or objecting to: (1) any request to extend the exclusivity pursuant to Section 1121 of the Bankruptcy Code as to any plan of reorganization or liquidation; or (2) the proposed effective date under any plan of reorganization or liquidation to the extent the effective date exceeds the first business day following 10 days from the entry of any confirmation order approving a plan. Notwithstanding the Priority Lien Agent's agreement to support, and not oppose or object to, any filed plan of reorganization or liquidation as provided for in this Section 4.02(h), the Priority Lien Agent shall retain its rights to receive information, including about the plan of reorganization or liquidation, as provided for in the Priority Lien Documents or under any law applicable to such Insolvency or Liquidation Proceeding.

(i) The Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, agrees that until the Discharge of Priority Lien Obligations has occurred, subject to the provisions of Section 3.02, neither the Second Lien Collateral Trustee nor any other Second Lien Secured Party, and the Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, agrees that until the Discharge of Priority Lien Obligations has occurred, neither the Third Lien Collateral Agent nor any other Third Lien Secured Party, shall seek relief, pursuant to Section 362(d) of the Bankruptcy Code or otherwise,

from the automatic stay of Section 362(a) of the Bankruptcy Code or from any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral if the Priority Lien Agent has not received relief from the automatic stay (or it has not been lifted for the Priority Lien Agent's benefit), without the prior written consent of the Priority Lien Agent.

(j) The Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, agrees that neither the Second Lien Collateral Trustee nor any other Second Lien Secured Party and the Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, agrees that neither the Third Lien Collateral Agent nor any other Third Lien Secured Party, shall oppose or seek to challenge any claim by the Priority Lien Agent or any other Priority Lien Secured Party for allowance or payment in any Insolvency or Liquidation Proceeding of Priority Lien Obligations consisting of post-petition interest, fees or expenses or cash collateralization of all letters of credit to the extent of the value of the Priority Liens (it being understood that such value will be determined without regard to the existence of the Second Liens or Third Liens on the Collateral), subject to the Priority Lien Cap. Neither Priority Lien Agent nor any other Priority Lien Secured Party shall oppose or seek to challenge any claim by the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Agent or any other Third Lien Secured Party for allowance or payment in any Insolvency or Liquidation Proceeding of Second Lien Obligations or Third Lien Obligations, as applicable, consisting of post-petition interest, fees or expenses to the extent of the value of the Second Liens or the Third Liens, as applicable, on the Collateral; provided that if the Priority Lien Agent or any other Priority Lien Secured Party shall have made any such claim, such claim (i) shall have been approved or (ii) will be approved contemporaneously with the approval of any such claim by the Second Lien Collateral Trustee or any Second Lien Secured Party or the Third Lien Collateral Agent or any Third Lien Secured Party, as applicable.

(k) Without the express written consent of the Priority Lien Agent, none of the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Agent or any other Third Lien Secured Party shall (or shall join with or support any third party in opposing, objecting to or contesting, as the case may be), in any Insolvency or Liquidation Proceeding involving any Grantor, (i) oppose, object to or contest the determination of the extent of any Liens held by any of Priority Lien Secured Party or the value of any claims of any such holder under Section 506(a) of the Bankruptcy Code or (ii) oppose, object to or contest the payment to the Priority Lien Secured Party of interest, fees or expenses under Section 506(b) of the Bankruptcy Code.

(l) [*Reserved*].

(m) Each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party and the Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, hereby agrees that prior to the Discharge of Priority Lien Obligations or the effectiveness of a purchase by Second Lien Purchasers in accordance with Section 3.06, whichever occurs first, the Priority Lien Agent shall have the exclusive right to credit bid the Priority Lien Obligations and further that none of the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Agent or any other Third Lien Secured Party shall (or shall join with or support any third party in opposing, objecting to or contesting, as the case may be) oppose, object to or contest such credit bid of the Priority Lien Obligations by the Priority Lien Agent.

(n) Without the consent of the Priority Lien Agent in its sole discretion, each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party and the Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, agrees it will not file an involuntary bankruptcy claim or seek the appointment of an examiner or a trustee for the Company or any of its subsidiaries.

(o) Each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party and the Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, waives any right to assert or enforce any claim (or support any party asserting a claim) under Sections 506(c) or 552 of the Bankruptcy Code as against any Priority Lien Secured Party or any of the Collateral.

(p) If the Company or any of its subsidiaries shall become subject to any Insolvency or Liquidation Proceeding and shall, as debtor(s)-in-possession, move for approval of DIP Financing to be provided by one or more DIP Lenders, under Section 364 of the Bankruptcy Code or the use of cash collateral under Section 363 of the Bankruptcy Code, the Third Lien Collateral Agent, for itself and on behalf of each Third Lien Secured Party, agrees that neither it nor any other Third Lien Secured Party will raise any objection, contest or oppose, and each Third Lien Secured Party will waive any claim such Person may now or hereafter have, to any such financing or cash collateral use (including, without limitation, any DIP Financing or cash collateral use in the nature of a "roll up" of all or a portion of the Second Lien Obligations or Priority Lien Obligations) or to the DIP Financing Liens on the Collateral securing the same, or to any grant of administrative expense priority under Section 364 of the Bankruptcy Code, unless (i) the Second Lien Collateral Trustee or the Second Lien Secured Parties oppose or object to such DIP Financing or such DIP Financing Liens or such use of cash collateral, (ii) the maximum principal amount of indebtedness permitted under such DIP Financing exceeds the sum of (A) the amount of Second Lien Obligations refinanced with the proceeds thereof and (B) $100,000,000, (iii) the DIP Financing does not provide for commercially reasonable terms as determined in good faith by the Board of Directors of the Company, or (iv) the Third Lien Secured Parties are not permitted to seek adequate protection to the extent permitted by Section 4.02(t). To the extent such DIP Financing Liens are senior to, or rank *pari passu* with, the Second Liens, the Third Lien Collateral Agent will, for itself and on behalf of the other Third Lien Secured Parties, subordinate the Third Liens on the Collateral to the Second Liens and to such DIP Financing Liens, so long as the Third Lien Collateral Agent, on behalf of the Third Lien Secured Parties, retains Liens on all the Collateral, including proceeds thereof arising after the commencement of any Insolvency or Liquidation Proceeding, with the same priority relative to the Priority Liens and the Second Liens as existed prior to the commencement of the case under the Bankruptcy Code.

(q) Without the prior written consent of the Second Lien Collateral Trustee in its sole discretion, the Third Lien Collateral Agent, for itself and on behalf of each Third Lien Secured Party, agrees not to propose, support or enter into any DIP Financing.

(r) The Third Lien Collateral Agent, for itself and on behalf of each Third Lien Secured Party, agrees that it will not object to, oppose or contest (or join with or support any third party objecting to, opposing or contesting) a sale or other Disposition, a motion to sell or Dispose or the bidding procedure for such sale or Disposition of any Collateral (or any portion thereof) under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code if the requisite Second Lien Secured Parties under the Second Lien Documents shall have consented to such sale or Disposition, such motion to sell or Dispose or such bidding procedure for such sale or Disposition of such Collateral and all Second Liens and Third Liens will attach to the proceeds of the sale in the same respective priorities as set forth in this Agreement.

(s) The Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, waives any claim that may be had against the Second Lien Collateral Trustee or any other Second Lien Secured Party arising out of any DIP Financing Liens (granted in a manner that is consistent with this Agreement) or administrative expense priority under Section 364 of the Bankruptcy Code.

(t) The Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, agrees that neither the Third Lien Collateral Agent nor any other Third Lien Secured Party will, in any Insolvency or Liquidation Proceeding, accept or retain any form of adequate protection unless they are expressly permitted to seek and obtain such adequate protection by this Section 4.02(t) (or file or prosecute any motion for adequate protection (or any comparable request for relief) based upon their interest in the Collateral, nor object to, oppose or contest (or join with or support any third party objecting to, opposing or contesting) (i) any request by the Second Lien Collateral Trustee or any other Second Lien Secured Party for adequate protection in any form or (ii) any objection by the Second Lien Collateral Trustee or any other Second Lien Secured Party to any motion, relief, action or proceeding based on the Second Lien Collateral Trustee or Second Lien Secured Parties claiming a lack of adequate protection, except that the Third Lien Secured Parties may:

(A) subject to Section 2.03, if the Second Lien Secured Parties are granted adequate protection in the form of an additional or replacement Lien (on existing or future assets of Grantors) in connection with any DIP Financing or use of cash collateral, seek and obtain relief granting adequate protection in the form of an additional or replacement Lien co-extensive in all respects with, but subordinated (as set forth in Section 2.01) to, and with the same relative priority to the Second Liens as existed prior to the commencement of the Insolvency or Liquidation Proceeding, all Liens granted in the Insolvency or Liquidation Proceeding to, or for the benefit of, the Second Lien Secured Parties; and

(B) freely seek and obtain any relief upon a motion for adequate protection (or any comparable relief), without any condition or restriction whatsoever, at any time after the Discharge of Second Lien Obligations.

(u) The Third Lien Collateral Agent, for itself and on behalf of each of the other of the Third Lien Secured Parties, waives any claim the Third Lien Collateral Agent or any such other Third Lien Secured Party may now or hereafter have against the Second Lien Collateral

Trustee or any other Second Lien Secured Party (or their representatives) arising out of any election by the Second Lien Collateral Trustee or any Second Lien Secured Parties, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b) of the Bankruptcy Code.

(v) The Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, agrees that in any Insolvency or Liquidation Proceeding, neither the Third Lien Collateral Agent nor any other Third Lien Secured Party shall propose, support or vote for any plan of reorganization or liquidation or disclosure statement of the Company or any other Grantor, unless such plan is accepted by the Class of Second Lien Secured Parties in accordance with Section 1126(c) of the Bankruptcy Code or otherwise provides for the payment in full solely in cash of all Second Lien Obligations (including all post-petition interest at the rate provided for in the Second Lien Documents (including default interest), fees, costs, charges, make whole amounts, expenses and cash collateralization of all letters of credit payable to the Second Lien Secured Parties) on or before the effective date of such plan of reorganization or liquidation. Except as provided herein, the Third Lien Secured Parties shall remain entitled to vote their claims in any such Insolvency or Liquidation Proceeding.

(w) The Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, hereby agrees that until the Discharge of Second Lien Obligations has occurred, subject to the provisions of Section 3.02, neither Third Lien Collateral Agent nor any Third Lien Secured Party shall seek relief, pursuant to Section 362(d) of the Bankruptcy Code or otherwise, from the automatic stay of Section 362(a) of the Bankruptcy Code or from any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral, without the prior written consent of the Second Lien Collateral Trustee.

(x) At all times prior to the Discharge of Second Lien Obligations, the Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, agrees that neither Third Lien Collateral Agent nor any other Third Lien Secured Party shall oppose or seek to challenge any claim by the Second Lien Collateral Trustee or any other Second Lien Secured Party for allowance or payment in any Insolvency or Liquidation Proceeding of Second Lien Obligations consisting of post-petition interest, fees, costs, charges, make whole amounts or expenses. At all times prior to the Discharge of Second Lien Obligations, neither Second Lien Collateral Trustee nor any other Second Lien Secured Party shall oppose or seek to challenge any claim by the Third Lien Collateral Agent or any other Third Lien Secured Party for allowance or payment in any Insolvency or Liquidation Proceeding of Third Lien Obligations consisting of post-petition interest, fees or expenses to the extent of the value of the Third Liens on the Collateral; provided that if the Second Lien Collateral Trustee or any other Second Lien Secured Party shall have made any such claim, such claim (i) shall have been approved or (ii) will be approved contemporaneously with the approval of any such claim by the Third Lien Collateral Agent or any Third Lien Secured Party.

(y) Without the express written consent of the Second Lien Collateral Trustee, neither Third Lien Collateral Agent nor any other Third Lien Secured Party shall (or shall join with or support any third party in opposing, objecting to or contesting, as the case may be), in any Insolvency or Liquidation Proceeding involving any Grantor, (i) oppose, object to or contest the determination of the extent of any Liens held by any of Second Lien Secured Party or the value of any claims of any such holder under Section 506(a) of the Bankruptcy Code or (ii) oppose, object to or contest the payment to the Second Lien Secured Party of interest, fees, costs, charges, make whole amounts or expenses under Section 506(b) of the Bankruptcy Code.

(z) Notwithstanding anything to the contrary contained herein, if in any Insolvency or Liquidation Proceeding a determination is made that any Lien encumbering any Collateral is not enforceable for any reason, then provided the Discharge of Priority Lien Obligations shall have occurred and has not been rescinded, voided or otherwise modified, the Third Lien Collateral Agent for itself and on behalf of each other Third Lien Secured Party, agrees that, any distribution or recovery they may receive in respect of any Collateral shall be segregated and held in trust and forthwith paid over, subject to the requirements of Section 6.01(a), to the Second Lien Collateral Trustee for the benefit of the Second Lien Secured Parties in the same form as received without recourse, representation or warranty (other than a representation of the Third Lien Collateral Agent that it has not otherwise sold, assigned, transferred or pledged any right, title or interest in and to such distribution or recovery) but with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, hereby appoints the Second Lien Collateral Trustee, and any officer or agent of the Second Lien Collateral Trustee, with full power of substitution, the attorney-in-fact of each Third Lien Secured Party for the limited purpose of carrying out the provisions of this Section 4.02(z) and taking any action and executing any instrument that the Second Lien Collateral Trustee may deem necessary or advisable to accomplish the purposes of this Section 4.02(z), which appointment is irrevocable and coupled with an interest.

(aa) The Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, hereby agrees that the Second Lien Collateral Trustee shall have the exclusive right to credit bid the Second Lien Obligations and further that neither the Third Lien Collateral Agent nor any other Third Lien Secured Party shall (or shall join with or support any third party in opposing, objecting to or contesting, as the case may be) oppose, object to or contest such credit bid by the Second Lien Collateral Trustee, whether in connection with a sale pursuant to Section 363 of the Bankruptcy Code, a Chapter 11 plan or otherwise.

(bb) Without the consent of the Second Lien Collateral Trustee in its sole discretion, the Third Lien Trustee, for itself and on behalf of each other Third Lien Secured Party, agrees it will not file an involuntary bankruptcy claim or seek the appointment of an examiner or a trustee for the Company or any of its subsidiaries.

(cc) The Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, waives any right to assert or enforce any claim (or support any party asserting a claim) under Sections 506(c) or 552 of the Bankruptcy Code as against any Second Lien Secured Party or any of the Collateral.

SECTION 4.03 Reinstatement.

(a) If any Priority Lien Secured Party is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of any Grantor any amount (a "Recovery") for any reason whatsoever, then the Priority Lien Obligations shall

be reinstated to the extent of such Recovery and the Priority Lien Secured Parties shall be entitled to a reinstatement of Priority Lien Obligations with respect to all such recovered amounts. Each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, and the Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, agrees that if, at any time, a Second Lien Secured Party or a Third Lien Secured Party, as applicable, receives notice of any Recovery, the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Agent or any other Third Lien Secured Party, as applicable, shall, to the extent consistent with Section 6.01(a), promptly pay over to the Priority Lien Agent any payment received by it and then in its possession or under its control in respect of any Collateral subject to any Priority Lien securing such Priority Lien Obligations and shall, to the extent consistent with Section 6.01(a), promptly turn any Collateral subject to any such Priority Lien then held by it over to the Priority Lien Agent, and the provisions set forth in this Agreement shall be reinstated as if such payment had not been made. If this Agreement shall have been terminated prior to any 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. Any amounts received by the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Agent or any other Third Lien Secured Party and then in its possession or under its control on account of the Second Lien Obligations or Third Lien Obligations, as applicable, after the termination of this Agreement shall, in the event of a reinstatement of this Agreement pursuant to this Section 4.03 and to the extent consistent with Section 6.01(a), be held in trust for and paid over to the Priority Lien Agent for the benefit of the Priority Lien Secured Parties for application to the reinstated Priority Lien Obligations until the discharge thereof.

(b) If after the Discharge of Priority Lien Obligations, any Second Lien Secured Party is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of any Grantor a Recovery for any reason whatsoever, then the Second Lien Obligations shall be reinstated to the extent of such Recovery and the Second Lien Secured Parties shall be entitled to a reinstatement of Second Lien Obligations with respect to all such recovered amounts. The Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, agrees that if, at any time after the Discharge of Priority Lien Obligations, a Third Lien Secured Party, as applicable, receives notice of any Recovery, the Third Lien Collateral Agent or any other Third Lien Secured Party, as applicable, shall promptly pay over to the Second Lien Collateral Trustee any payment received by it and then in its possession or under its control in respect of any Collateral subject to any Third Lien securing such Third Lien Obligations and shall promptly turn any Collateral subject to any such Third Lien then held by it over to the Second Lien Collateral Trustee, and the provisions set forth in this Agreement shall be reinstated as if such payment had not been made. If this Agreement shall have been terminated prior to any 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. Any amounts received by the Third Lien Collateral Agent or any other Third Lien Secured Party and then in its possession or under its control on account of the Third Lien Obligations, as applicable, after the termination of this Agreement shall, in the event of a reinstatement of this Agreement pursuant to this Section 4.03, be held in trust for and paid over to the Second Lien Collateral Trustee for the benefit of the Second Lien Secured Parties for application to the reinstated Second Lien Obligations until the discharge thereof.

(c) This Section 4.03 shall survive termination of this Agreement.

SECTION 4.04 Refinancings; Additional Second Lien Debt; Additional Third Lien Debt.

(a) The Priority Lien Obligations, the Second Lien Obligations and the Third Lien Obligations may be Replaced by any Priority Substitute Credit Facility, Second Lien Substitute Facility or Third Lien Substitute Facility, as the case may be, in each case, without notice to, or the consent of any Secured Party, all without affecting the Lien priorities provided for herein or the other provisions hereof; provided, that (i) the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Agent shall receive on or prior to incurrence of a Priority Substitute Credit Facility, Second Lien Substitute Facility or Third Lien Substitute Credit Facility (A) an Officers' Certificate from the Company stating and certifying that (I) the incurrence thereof and the related Liens are permitted to be incurred by each applicable Secured Debt Document, (II) the requirements of Section 4.06 have been satisfied, and (III) such Priority Substitute Credit Facility, Second Lien Substitute Facility or Third Lien Substitute Facility constitutes "Priority Lien Debt", "Second Lien Debt" or "Third Lien Debt", as applicable, for the purposes of the Secured Debt Documents and this Agreement; provided that no Series of Secured Debt may be designated as more than one of Priority Lien Debt, Second Lien Debt or Third Lien Debt, (B) a Priority Confirmation Joinder from an authorized agent, trustee or other representative of the holders or lenders of any indebtedness that Replaces any of the Priority Lien Obligations, the Second Lien Obligations or the Third Lien Obligations and, to the extent necessary or appropriate to facilitate such transaction, a new intercreditor agreement substantially similar to this Agreement, as in effect on the date hereof and (C) evidence that the Company has duly authorized, executed (if applicable) and recorded (or caused to be recorded) in each appropriate governmental office all relevant filings and recordations deemed necessary by the Company and the holder of such Replacement, or its Secured Debt Representative, to ensure that such Replacement is secured by the Collateral in accordance with the applicable Security Documents (provided that such filings and recordings may be authorized, executed and recorded following any incurrence on a post-closing basis if permitted by the applicable Secured Debt Representative), (ii) in the case of a Priority Substitute Credit Facility, the aggregate outstanding principal amount of the Priority Lien Obligations plus the unused portion of any borrowing base (plus the unused portion of any other then unutilized facilities thereunder, if any) at such time (including any interest paid-in-kind) outstanding at any time under the definitive debt documents for the Priority Substitute Credit Facility and any other Priority Lien Obligations (with outstanding letters of credit being deemed to have a principal amount equal to the stated amount thereof), after giving effect to such Priority Substitute Credit Facility, shall not exceed the Priority Lien Cap, (iii) in the case of a Second Lien Substitute Facility, such Indebtedness shall not mature and shall not have any mandatory or scheduled payments or sinking fund obligations prior to 91 days after the latest stated final maturity date of the Second Lien Indenture (and, if applicable, of any Second Lien Substitute Facility) and, if later, of any Additional Second Lien Obligations (except as a result of a customary change of control or asset sale repurchase offer provisions) and the principal amount of such Indebtedness shall not exceed the principal amount of, plus any accrued and unpaid interest on, the Second Lien Obligations

being refinanced or exchanged and (iv) in the case of a Third Lien Substitute Facility, such Indebtedness shall not mature and shall not have any mandatory or scheduled payments or sinking fund obligations prior to 180 days after the latest maturity date of the Second Lien Debt (except as a result of a customary change of control or asset sale repurchase offer provisions, which shall be no more favorable to the holders thereof than the corresponding provisions of the Second Lien Documents) and the principal amount of such Indebtedness shall not exceed the sum of (x) the principal amount of the Third Lien Obligations, plus any accrued and unpaid interest thereon, being refinanced or exchanged and (y) the principal amount of, plus any accrued and unpaid interest on, the Existing Unsecured Notes (as defined in the Second Lien Indenture) being refinanced or exchanged.

(b) The Company will be permitted to designate hereunder as an additional holder of Second Lien Obligations or as an initial or additional holder of Third Lien Obligations each Person who is, or who becomes, the registered holder of Second Lien Debt or Third Lien Debt, as applicable, incurred by the Company on or after the date of this Agreement in accordance with the terms of all applicable Secured Debt Documents. The Company may effect such designation by delivering to the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Agent, each of the following:

(i) an Officers' Certificate (A) stating and certifying that the Company intends to incur (I) Additional Second Lien Obligations which will be Second Lien Debt and will be secured by a Second Lien equally and ratably with all previously existing and future Second Lien Debt, (II) [RESERVED] or (III) or Additional Third Lien Obligations which will be Third Lien Debt and will be secured by a Third Lien equally and ratably with all previously existing and future Third Lien Debt, (B) stating and certifying that such Indebtedness and Liens securing such Indebtedness (and all related obligations) will be permitted to be incurred by each applicable Secured Debt Document, (C) stating and certifying that the requirements of Section 4.06 have been satisfied, and (D) in the case of Additional Second Lien Obligations (other than the Additional Second Lien Debt Facility described in Section 4.04(e)), stating and certifying that such Indebtedness does not mature and does not have any mandatory or scheduled payments or sinking fund obligations prior to the date that is 91 days after the latest stated final maturity date of the Second Lien Indenture (and, if applicable, of any Second Lien Substitute Facility) and, if later, of any Additional Second Lien Obligations (except as a result of a customary change of control or asset sale repurchase offer provisions) and the principal amount of such Indebtedness does not exceed the principal amount of, plus any accrued and unpaid interest on, the Second Lien Obligations being refinanced or exchanged;

(ii) an authorized agent, trustee or other representative on behalf of the holders or lenders of any Additional Second Lien Obligations or Additional Third Lien Obligations, as applicable, must be designated as an additional holder of Secured Obligations hereunder and must, prior to such designation, sign and deliver on behalf of the holders or lenders of such Additional Second Lien Obligations or Additional Third Lien Obligations, as applicable, a Priority Confirmation Joinder, and, to the extent necessary or appropriate (as reasonably determined by each of the Priority Lien Agent and the Second Lien Collateral Trustee) to facilitate such transaction, a new intercreditor agreement substantially similar to this Agreement, as in effect on the date hereof; and

(iii) evidence that the Company has duly authorized, executed (if applicable) and recorded (or caused to be recorded) in each appropriate governmental office all relevant filings and recordations deemed necessary by the Company and the holder of such Additional Second Lien Obligations or Additional Third Lien Obligations, as applicable, or its Secured Debt Representative, to ensure that the Additional Second Lien Obligations or Additional Third Lien Obligations are secured by the Collateral in accordance with the Second Lien Security Documents or the Third Lien Security Documents, as applicable (provided that such filings and recordings may be authorized, executed and recorded following any incurrence on a post-closing basis if permitted by the Second Lien Representatives or Third Lien Representatives for such Additional Second Lien Obligations or Additional Third Lien Obligations, as applicable).

(c) Notwithstanding anything contained in this Section 4.04, nothing in this Agreement will be construed to allow the Company or any other Grantor to incur additional indebtedness (or to incur, assume or otherwise permit or allow to exist any Liens) unless otherwise permitted by the terms of each Secured Debt Document.

(d) Each of the then-exiting Priority Lien Agent, Second Lien Collateral Trustee and the Third Lien Collateral Agent shall be authorized to execute and deliver such documents and agreements (including amendments or supplements to this Agreement) as such holders, lenders, agent, trustee or other representative may reasonably request to give effect to any such Replacement or any incurrence of Additional Second Lien Obligations or Additional Third Lien Obligations, it being understood that the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Agent or (if permitted by the terms of the applicable Secured Debt Documents) the Grantors, without the consent of any other Secured Party or (in the case of the Grantors) one or more Secured Debt Representatives, may amend, supplement, modify or restate this Agreement to the extent necessary or appropriate to facilitate such amendments or supplements to effect such Replacement or incurrence all at the expense of the Grantors. Upon the consummation of such Replacement or incurrence and the execution and delivery of the documents and agreements contemplated in the preceding sentence, the holders or lenders of such indebtedness and any authorized agent, trustee or other representative thereof shall be entitled to the benefits of this Agreement.

(e) Each Secured Debt Representative, for itself and on behalf of each applicable Secured Party, acknowledges and agrees that the Indenture (with respect to the 8.0%/11.0% 1.5 Lien Senior Secured PIK Toggle Notes due 2022) dated as of March 15, 2017, among the Company, as the issuer, the Grantors party thereto from time to time, Wilmington Trust, National Association, as trustee and the Second Lien Collateral Trustee, as amended, restated, adjusted, waived, renewed, extended, supplemented or otherwise modified from time to time in accordance with the terms hereof, and any credit agreement, loan agreement, note agreement, promissory note, indenture or any other agreement or instrument evidencing or governing the terms of any Second Lien Substitute Facility constitute a Second Lien Debt Facility and the indebtedness and other obligations thereunder and the guarantees thereof, in each case, as in effect on the date hereof, constitute Second Lien Debt.

(f) Each Secured Debt Representative, for itself and on behalf of each applicable Secured Party, acknowledges and agrees that (i) the Term Loan Credit Agreement, dated as of October 19, 2015, as amended by the First Amendment thereto dated as of March 15, 2017, among the Company, the Grantors party thereto from time to time, the Lenders (as defined therein) party thereto from time to time, the Junior Third Lien Collateral Agent and Junior Third Lien Administrative Agent, as administrative agent thereunder, as amended, restated, adjusted, waived, renewed, extended, supplemented or otherwise modified from time to time in accordance with the terms hereof, and (ii) the 1.75 Lien Term Loan Credit Agreement, dated as of March 15, 2017, among the Company, the Grantors party thereto from time to time, the Lenders (as defined therein) party thereto from time to time, the Senior Third Lien Collateral Agent and Senior Third Lien Administrative Agent, as administrative agent thereunder, as amended, restated, adjusted, waived, renewed, extended, supplemented or otherwise modified from time to time in accordance with the terms hereof, each constitute a Third Lien Debt Facility and the indebtedness and other obligations, respectively, thereunder and the guarantees, respectively, thereof, in each case, as in effect on the date hereof, constitute Third Lien Debt.

SECTION 4.05 Amendments to Priority Lien Documents, Second Lien Documents and Third Lien Documents.

(a) Prior to the Discharge of Second Lien Obligations, without the prior written consent of the Second Lien Collateral Trustee, no Priority Lien Document may be amended, supplemented, restated or otherwise modified and/or refinanced or entered into to the extent such amendment, supplement, restatement or modification and/or refinancing, or the terms of any new Priority Lien Document would (i) adversely affect the Lien priority rights of the Second Lien Secured Parties or Third Lien Secured Parties or the rights of the Second Lien Secured Parties or Third Lien Secured Parties, as the case may be, to receive required payments that are due and payable (or than are otherwise owed) pursuant to the Second Lien Documents or Third Lien Documents, as applicable, (ii) except as otherwise provided for in this Agreement, add any Liens securing the Collateral granted under the Priority Lien Security Documents, (iii) confer any additional rights on the Priority Lien Collateral Agent or any other Priority Lien Secured Party in a manner adverse to the interests of the Second Lien Secured Parties or the Third Lien Secured Parties in any material respects, (iv) contravene the provisions of this Agreement or the Second Lien Documents, (v) increase the outstanding principal amount of the loans and other extensions of credit and the stated amount of letters of credit under the Priority Credit Agreement and/or any Priority Substitute Credit Facility and/or any other Priority Lien Documents to an aggregate amount being in excess of the amount set forth in clause (a) of the definition of "Priority Lien Cap", (vi) provide for the incurrence of incremental facilities or incremental indebtedness (or incremental equivalent facilities or indebtedness) (or analogous extensions of credit), (vii) change any covenants, defaults, or events of default under any Priority Lien Document (including the addition of covenants, defaults, or events of default not contained in the Priority Credit Agreement or other Priority Lien Documents as in effect on the date hereof), (viii) change the waterfall provisions or similar order of payment provisions in the Priority Lien Documents or create or otherwise establish layers of Priority Lien Debt or other subordinated tranches (or sub-tranches) of Priority Lien Debt, (ix) increase the applicable margin or similar component of interest rate (including by increasing any interest rate floor) or add or increase any fees (excluding any customary one-time fees, whether payable at one time or in multiple installments, payable in connection with an amendment, waiver or similar agreement or

customary fees in connection with an extension of additional credit) or existing premiums in a manner that would increase the total yield on the Priority Lien Debt by more than three percent (3%) above the total current yield on the Priority Lien Debt as specified in the Priority Lien Documents as in effect on the date hereof or increase the default rate by any margin or increase any (or add any additional) prepayment or other premium, or "make-whole" or similar premium, or (x) except as otherwise contemplated or required by the Priority Lien Documents (as in effect on the date hereof) or any equivalent terms in any Priority Lien Document entered into after the date hereof that are no more extensive than the Priority Lien Documents as in effect on the date hereof, and except in connection with any DIP Financing permitted hereunder, expressly subordinate the Lien on the Collateral under the Priority Lien Documents to Liens on the Collateral securing any other indebtedness.

(b) Prior to the Discharge of Priority Lien Obligations, without the prior written consent of the Priority Lien Agent, no Second Lien Document or Third Lien Document may be amended, supplemented, restated or otherwise modified and/or refinanced or entered into to the extent such amendment, supplement, restatement or modification and/or refinancing, or the terms of any new Second Lien Document or Third Lien Document, as applicable, would (i) adversely affect the Lien priority rights of the Priority Lien Secured Parties or the rights of the Priority Lien Secured Parties to receive payments owing pursuant to the Priority Lien Documents, (ii) except as otherwise provided for in this Agreement, add any Liens securing the Collateral granted under the Second Lien Security Documents or the Third Lien Security Documents, (iii) confer any additional material rights on the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Agent or any other Third Lien Secured Party in a manner adverse to the Priority Lien Secured Parties (other than for periods following the latest maturity date under the Priority Credit Agreement) unless a similar modification is concurrently made under the Priority Lien Documents, (iv) contravene the provisions of this Agreement or the Priority Lien Documents, (v) change to earlier dates any dates upon which required payments of principal or interest are due thereon (except to the extent that equivalent changes are implemented under the First Lien Documents), (vi) change the mandatory redemption, prepayment, repurchase, tender or defeasance provisions thereof in a manner that would require a redemption, prepayment, repurchase, tender or defeasance not required pursuant to the terms of such Second Lien Document or Third Lien Document, as applicable, as of the date hereof, or in a manner materially adverse to the interests of the Priority Lien Secured Parties, (vii) change any covenants, defaults, or events of default under the Second Lien Indenture or any other Second Lien Document or under any Third Lien Document (including the addition of covenants, defaults, or events of default not contained in the Second Lien Indenture or other Second Lien Documents or Senior Third Lien Credit Agreement, Junior Third Lien Credit Agreement or other Third Lien Document as in effect on the date hereof) to restrict any Grantor from making payments of the Priority Lien Debt that would otherwise be permitted under the Second Lien Documents or Third Lien Documents as in effect on the date hereof, (viii) change any default or event of default thereunder in a manner materially adverse to Grantors thereunder (it being understood that any waiver of any such default or event of default, in and of itself, shall not be deemed to be materially adverse to Grantors) when taken as a whole, than any corresponding defaults or events of default under the Priority Lien Documents (other than for periods following the Discharge of Priority Lien Obligations), unless a similar amendment or modification is concurrently made under the Priority Lien Documents, or (ix) increase materially the non-monetary obligations of Grantors thereunder or confer any additional

material rights on the Second Lien Secured Parties or Third Lien Secured Parties that would be adverse to the interests of the Priority Lien Secured Parties (other than for periods following the latest maturity date under the Priority Credit Agreement) unless a similar modification is concurrently made under the Priority Lien Documents.

(c) Prior to the Discharge of Second Lien Obligations, without the prior written consent of the Second Lien Collateral Trustee, no Third Lien Document may be amended, supplemented, restated or otherwise modified and/or refinanced or entered into to the extent such amendment, supplement, restatement or modification and/or refinancing, or the terms of any new Third Lien Document, as applicable, would (i) adversely affect the Lien priority rights of the Second Lien Secured Parties or the rights of the Second Lien Secured Parties to receive payments owing pursuant to the Second Lien Documents, (ii) except as otherwise provided for in this Agreement, add any Liens securing the Collateral granted under the Third Lien Security Documents, (iii) confer any additional rights or benefits on the Third Lien Collateral Agent or any other Third Lien Secured Party in a manner adverse to the interests of the Second Lien Secured Parties, (iv) contravene the provisions of this Agreement or the Second Lien Documents, (v) change to earlier dates any dates upon which payments of principal or interest are due thereon (except to the extent that equivalent changes are implemented under the Priority Lien Documents and Second Lien Documents), (vi) change the mandatory redemption, prepayment, repurchase, tender or defeasance provisions thereof in a manner materially adverse to the interests of the Second Lien Secured Parties, (vii) change any covenants, defaults, or events of default under the Third Lien Documents (including the addition of covenants, defaults, or events of default not contained in the Priority Lien Documents or the Second Lien Documents as in effect on the date hereof) to restrict any Grantor from making payments of the Priority Lien Debt or the Second Lien Debt or from making a Disposition of any property or assets (including Collateral) that would otherwise be permitted under the Third Lien Documents (as in effect on the date hereof), (viii) change any default or event of default thereunder in a manner materially adverse to the interests of the Grantors thereunder (it being understood that any waiver of any such default or event of default, in and of itself, shall not be deemed to be materially adverse to the interests of the Grantors) when taken as a whole (other than for periods following the Discharge of Second Lien Obligations), unless a similar amendment or modification is concurrently made under the Second Lien Documents or (ix) increase the non-monetary or monetary obligations of any of the Grantors thereunder or confer any additional rights on the Third Lien Secured Parties that would be adverse to the interests of the Priority Lien Secured Parties or the Second Lien Secured Parties (other than for periods following the latest maturity date under the Priority Credit Agreement and the Second Lien Indenture) unless a similar modification is concurrently made under the Priority Lien Documents and the Second Lien Documents. In addition, prior to the Discharge of Second Lien Obligations, without the prior written consent of the Second Lien Collateral Trustee, the Third Lien Collateral Trust Agreement may not be amended, supplemented, restated or otherwise modified to the extent such amendment, supplement, restatement or modification would be adverse to the interests of the Priority Lien Secured Parties or the Second Lien Secured Parties.

SECTION 4.06 Legends.

Each of:

(a) the Priority Lien Agent acknowledges with respect to the Priority Credit Agreement and the Priority Lien Security Documents,

(b) the Second Lien Collateral Trustee acknowledges with respect to (i) the Second Lien Indenture and the Second Lien Indenture Security Documents, and (ii) the Additional Second Lien Debt Facility and the Additional Second Lien Security Documents, if any, and

(c) the Third Lien Collateral Agent acknowledges with respect to (i) the Third Lien Debt Facility and the Third Lien Security Documents and (ii) the Additional Third Lien Debt Facility and the Additional Third Lien Security Documents, if any, that the Second Lien Indenture, the Third Lien Debt Facility, the Additional Second Lien Debt Facility, the Additional Third Lien Debt Facility, the Second Lien Documents (other than control agreements to which both the Priority Lien Agent and the Second Lien Collateral Trustee are parties), the Third Lien Documents (other than control agreements to which the Priority Lien Agent or the Second Lien Collateral Trustee, as applicable, and the Third Lien Collateral Agent are parties) and each associated Security Document (other than control agreements to which both the Priority Lien Agent and the Second Lien Collateral Trustee are parties or, in the case of Third Lien Security Documents, other than control agreements to which the Priority Lien Agent or the Second Lien Collateral Trustee, as applicable, and the Third Lien Collateral Agent are parties) granting any security interest in the Collateral will contain the appropriate legend set forth on Annex I.

SECTION 4.07 Second Lien Secured Parties and Third Lien Secured Parties Rights as Unsecured Creditors; Judgment Lien Creditor. Both before and during an Insolvency or Liquidation Proceeding, any of the Second Lien Secured Parties and the Third Lien Secured Parties may take any actions and exercise any and all rights that would be available to a holder of unsecured claims; provided, however, that the Second Lien Secured Parties and the Third Lien Secured Parties may not take any action inconsistent with this Agreement, provided, further, that in the event that any of the Second Lien Secured Parties or Third Lien Secured Parties becomes a judgment Lien creditor in respect of any Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to the Second Lien Obligations or the Third Lien Obligations, as applicable, such judgment Lien shall be subject to the terms of this Agreement for all purposes (including in relation to the Priority Lien Obligations and the Second Lien Obligations, as applicable) as the Second Liens and Third Liens, as applicable, are subject to this Agreement.

SECTION 4.08 Postponement of Subrogation.

(a) Each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party, and the Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, hereby agrees that no payment or distribution to any Priority Lien Secured Party pursuant to the provisions of this Agreement shall entitle any Second Lien Secured Party or Third Lien Secured Party to exercise any rights of subrogation in respect thereof until, in the case of the Second Lien Secured Parties, the Discharge of Priority Lien Obligations, and in the case of the Third Lien Secured Parties, the Discharge of Priority Lien Obligations and the Discharge of Second Lien Obligations shall have occurred. Following the Discharge of Priority Lien Obligations, but subject to the reinstatement as provided in Section 4.03, each Priority Lien Secured Party will execute such documents, agreements, and instruments as any Second Lien Secured Party may reasonably request to evidence the transfer by subrogation to any such Person of an interest in

the Priority Lien Obligations resulting from payments or distributions to such Priority Lien Secured Party by such Person, so long as all costs and expenses (including all reasonable legal fees and disbursements) incurred in connection therewith by such Priority Lien Secured Party are paid by such Person upon request for payment thereof.

(b) Following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, the Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, agrees that no payment or distribution to any Second Lien Secured Party pursuant to the provisions of this Agreement shall entitle any Third Lien Secured Party to exercise any rights of subrogation in respect thereof. Following the Discharge of Second Lien Obligations, but subject to the reinstatement as provided in Section 4.03, each Second Lien Secured Party will execute such documents, agreements, and instruments as any Third Lien Secured Party may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the Second Lien Obligations resulting from payments or distributions to such Second Lien Secured Party by such Person, so long as all costs and expenses (including all reasonable legal fees and disbursements) incurred in connection therewith by such Second Lien Secured Party are paid by such Person upon request for payment thereof.

SECTION 4.09 Acknowledgment by the Secured Debt Representatives. Each of the Priority Lien Agent, for itself and on behalf of the other Priority Lien Secured Parties, the Second Lien Collateral Trustee, for itself and on behalf of the other Second Lien Secured Parties, and the Third Lien Collateral Agent, for itself and on behalf of the other Third Lien Secured Parties, hereby acknowledges that this Agreement is a material inducement to enter into a business relationship, that each has relied on this Agreement to enter into the Priority Credit Agreement, the Second Lien Indenture, the Additional Second Lien Documents and the Third Lien Documents, as applicable, and all documentation related thereto, and that each will continue to rely on this Agreement in their related future dealings.

SECTION 4.10 Right of First Offer of Backstop Commitment Parties

(i) Grant. The Priority RBL Agent, on behalf of itself and each Lender (as defined in the Priority Credit Agreement), and, by its acceptance hereof, the Company, each hereby (x) unconditionally and irrevocably grants to each Backstop Commitment Party, in accordance with its ROFO Applicable Percentage, a Right of First Offer, from and after the date of this Agreement until the termination of the Priority Credit Agreement and the Discharge of Priority Lien Obligations and (y) agrees that, for purposes of exercising the Right of First Offer provided for in this Section 4.10, each of the Backstop Commitment Parties and their permitted transferees or assignees shall constitute an "Eligible Assignee" under the Priority Credit Agreement; provided that, notwithstanding anything to the contrary in the Priority Credit Agreement, (1) so long as, at any applicable date of determination, the Backstop Commitment Parties, in the aggregate, hold Credit Exposures and Unused Commitments (each as defined in the Priority Credit Agreement) representing less than 33.33% of the Aggregate Credit Exposure (as defined in the Priority Credit Agreement) and Unused Commitments at such time (or, if the Commitments (as defined in the Priority Credit Agreement) have been terminated, if the Backstop Commitment Parties hold, in the aggregate, Credit Exposures

representing less than 33.33% the Aggregate Credit Exposure at such time), the Backstop Commitment Parties that have exercised such Right of First Offer shall not have any right to approve any amendment, modification or waiver of any provision of the Priority Credit Agreement (other than (x) the rights a Defaulting Lender (as defined in the Priority Credit Agreement) would have with respect to any amendment, modification or waiver described in the first proviso to Section 11.02(b) of the Priority Credit Agreement that affects such Backstop Commitment Party, (y) with respect to any proposed amendment, modification or waiver of any provision of the Priority Credit Agreement that would require a vote of 100% of the Lenders (as defined in the Priority Credit Agreement) or (z) with respect to any proposed amendment, modification or waiver of any provision of the Priority Credit Agreement that would treat any Backstop Commitment Party in a manner that is less favorable to such Backstop Commitment Party in any respect than the proposed treatment of the other Lenders (as defined in the Priority Credit Agreement) (and with it being understood and agreed that the Backstop Commitment Parties will not agree to any proposed amendment, modification or waiver of any provision of the Priority Credit Agreement that would treat any Lender (as defined in the Priority Credit Agreement) that is not a Backstop Commitment Party in a manner that is less favorable to such Lender (as defined in the Priority Credit Agreement) in any respect than the proposed treatment of the Backstop Commitment Parties), (2) if, at any applicable date of determination, the Backstop Commitment Parties, in the aggregate, hold Credit Exposures and Unused Commitments (each as defined in the Priority Credit Agreement) representing at least 33.33% of the Aggregate Credit Exposure (as defined in the Priority Credit Agreement) and all Unused Commitments at such time (or, if the Commitments (as defined in the Priority Credit Agreement) have been terminated, if the Backstop Commitment Parties hold, in the aggregate, Credit Exposures representing at least 33.33% the Aggregate Credit Exposure at such time), the Backstop Commitment Parties that have exercised such Right of First Offer shall have the same rights to approve any amendment, modification or waiver of any provision of the Priority Credit Agreement as the other Lenders (as defined in the Priority Credit Agreement) and (3) no assignment (or proposed assignment) of all or a portion of the rights and obligations of a Lender (as defined in the Priority Credit Agreement) under the Priority Credit Agreement (including all or a portion of its Revolving Commitment and the Loans (each as defined in the Priority Credit Agreement)) may be consummated unless the applicable Lender (as defined in the Priority Credit Agreement), the ROFO Agent, the Priority RBL Agent and the applicable Backstop Commitment Parties have complied with the provisions of this Section 4.10 (including, for the avoidance of doubt, the notice requirements and notice periods provided for in Section 4.10(ii)), and any such proposed assignment shall also be subject to compliance with the provisions of this Section 4.10 (including, for the avoidance of doubt, the notice requirements and notice periods provided for in Section 4.10(ii)). For the avoidance of doubt, it is understood and agreed that compliance by an applicable Lender (as defined in the Priority Credit Agreement) with this Section 4.10 with respect to a particular assignment or proposed assignment shall not be deemed to mean that such Lender need not comply with this Section 4.10 with respect to any future or separate assignment or proposed assignment.

(ii) Notice and Forfeiture. Prior to commencing the consent solicitation required to be undertaken pursuant to Section 11.04(b) of the Priority Credit Agreement with respect to a proposed assignment of all or a portion of the rights and obligations of a Lender (as defined in the Priority Credit Agreement) under the Priority Credit Agreement (including all or a portion of its Revolving Commitment and the Loans (each as defined in the Priority Credit Agreement) at the time owing to it)), the Priority RBL Agent shall notify the ROFO Agent and deliver proposed assignment documentation to the ROFO Agent, who will promptly deliver such documentation to the Backstop Commitment Parties. Such delivered assignment documentation shall consist of an unexecuted Assignment and Assumption (as defined in the Priority Credit Agreement) that shall contain information as to the aggregate amount of the proposed assignment and the identity of the proposed assigning Lender (as defined in the Priority Credit Agreement). To exercise its Right of First Offer under this Section 4.10, the applicable Backstop Commitment Party must deliver a ROFO Notice to the ROFO Agent (who will promptly deliver the same to the Priority RBL Agent) within five (5) business days after receipt by the ROFO Agent of the assignment documentation required to be delivered to the Backstop Commitment Parties under this Section 4.10. If the terms of the ROFO Notice provide for a purchase price for the applicable Loans and Revolving Commitments (each as defined in the Priority Credit Agreement) that is equal to par, then the Priority RBL Agent (on behalf of itself and the applicable assigning Lender) shall accept the offer set forth in the ROFO Notice. If the terms of the ROFO Notice provide for a purchase price for the applicable Loans and Revolving Commitments (each as defined in the Priority Credit Agreement) that is less than par, then the Priority RBL Agent shall have a period (not to exceed five (5) business days) to inform the ROFO Agent whether such offer has been accepted or declined by the proposed assigning Lender (as defined in the Priority Credit Agreement) (and with it being understood and agreed that if the Priority RBL Agent has not provided the ROFO Agent with a response within such five (5) business day period, such offer shall be deemed to have been declined by the applicable assigning Lender (as defined in the Priority Credit Agreement)). In the event the offer provided for in the applicable ROFO Notice is accepted (whether automatically (in the case of an offer at par) or by the applicable assigning Lender (as defined in the Priority Credit Agreement) as provided in the immediately preceding sentence), the applicable accepting Backstop Commitment Party shall consummate the proposed assignment in accordance with its ROFO Applicable Percentage, within a reasonable period of time following confirmation of the acceptance of its offer from the Priority RBL Agent. Upon receipt of such ROFO Notice, the ROFO Agent shall deliver a copy of such ROFO Notice to the Priority RBL Agent for delivery to the applicable Lender(s) (as defined in the Priority Credit Agreement). Failure to deliver a ROFO Notice within the time period provided for in this Section 4.10(b) will result in the forfeiture of the applicable Backstop Commitment Party's exercise of the Right of First Offer as it applies to the proposed assignment which occasioned its application and will otherwise authorize the consummation of the proposed assignment, on the terms provided to the Backstop Commitment Parties, between the applicable Lender(s) (as defined in the Priority Credit Agreement) and proposed assignee(s).

ARTICLE V

GRATUITOUS BAILMENT FOR PERFECTION OF CERTAIN SECURITY INTERESTS

SECTION 5.01 General. Prior to the Discharge of Priority Lien Obligations, the Priority Lien Agent agrees that if it shall at any time hold a Priority Lien on any Collateral that can be perfected by the possession or control of such Collateral or of any Account in which such Collateral is held, and if such Collateral or any such Account is in fact in the possession or under the control of the Priority Lien Agent, the Priority Lien Agent will serve as gratuitous bailee for (i) the Second Lien Collateral Trustee for the sole purpose of perfecting the Second Lien of the Second Lien Collateral Trustee on such Collateral and (ii) the Third Lien Collateral Agent for the sole purpose of perfecting the Third Lien of the Third Lien Collateral Agent on such Collateral. It is agreed that the obligations of the Priority Lien Agent and the rights of the Second Lien Collateral Trustee, the other Second Lien Secured Parties, the Third Lien Collateral Agent and the other Third Lien Secured Parties in connection with any such bailment arrangement will be in all respects subject to the provisions of Article II. Notwithstanding anything to the contrary herein, the Priority Lien Agent will be deemed to make no representation as to the adequacy of the steps taken by it to perfect the Second Lien or Third Lien on any such Collateral and shall have no responsibility, duty, obligation or liability to the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Agent or any other Third Lien Secured Party or any other Person for such perfection or failure to perfect, it being understood that the sole purpose of this Article is to enable the Second Lien Secured Parties to obtain a perfected Second Lien and the Third Lien Secured Parties to obtain a perfected Third Lien in such Collateral to the extent, if any, that such perfection results from the possession or control of such Collateral or any such Account by the Priority Lien Agent. The Priority Lien Agent acting pursuant to this Section 5.01 shall not have by reason of the Priority Lien Security Documents, the Second Lien Security Documents, the Third Lien Security Documents, this Agreement or any other document or theory, a fiduciary relationship in respect of any Priority Lien Secured Party, the Second Lien Collateral Trustee, any Second Lien Secured Party, the Third Lien Collateral Agent or any Third Lien Secured Party. Subject to Section 4.03, from and after the Discharge of Priority Lien Obligations, the Priority Lien Agent shall take all such actions in its power as shall reasonably be requested by the Grantors and/or the Second Lien Collateral Trustee (at the sole cost and expense of the Grantors) to transfer possession or control of such Collateral or any such Account (in each case to the extent the Second Lien Collateral Trustee has a Lien on such Collateral or Account after giving effect to any prior or concurrent releases of Liens) to the Second Lien Collateral Trustee for the benefit of all Second Lien Secured Parties. Following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, the Second Lien Collateral Trustee agrees that if it shall at any time hold a Second Lien on any Collateral that can be perfected by the possession or control of such Collateral or of any Account in which such Collateral is held, and if such Collateral or any such Account is in fact in the possession or under the control of the Second Lien Collateral Trustee, the Second Lien Collateral Trustee will serve as gratuitous bailee for the Third Lien Collateral Agent for the sole purpose of perfecting the Third Lien of the Third Lien Collateral Agent on such Collateral. It is agreed that the obligations of the Second Lien Collateral Trustee and the rights of the Third Lien Collateral Agent and the other Third Lien Secured Parties in connection with any such bailment arrangement will be in all respects subject to the provisions of Article II.

Notwithstanding anything to the contrary herein, the Second Lien Collateral Trustee will be deemed to make no representation as to the adequacy of the steps taken by it to perfect the Third Lien on any such Collateral and shall have no responsibility, duty, obligation or liability to the Third Lien Collateral Agent or any other Third Lien Secured Party or any other Person for such perfection or failure to perfect, it being understood that the sole purpose of this Article is to enable the Third Lien Secured Parties to obtain a perfected Third Lien in such Collateral to the extent, if any, that such perfection results from the possession or control of such Collateral or any such Account by the Second Lien Collateral Trustee. The Second Lien Collateral Trustee acting pursuant to this Section 5.01 shall not have by reason of the Second Lien Security Documents, the Third Lien Security Documents, this Agreement or any other document or theory, a fiduciary relationship in respect of any Second Lien Secured Party, the Third Lien Collateral Agent or any Third Lien Secured Party. Subject to Section 4.03, from and after the Discharge of Second Lien Obligations, the Second Lien Collateral Trustee shall take all such actions in its power as shall reasonably be requested by the Grantors and/or the Third Lien Collateral Agent (at the sole cost and expense of the Grantors) to transfer possession or control of such Collateral or any such Account (in each case to the extent the Third Lien Collateral Agent has a Lien on such Collateral or Account after giving effect to any prior or concurrent releases of Liens) to the Third Lien Collateral Agent for the benefit of all Third Lien Secured Parties.

SECTION 5.02 Deposit Accounts.

(a) Prior to the Discharge of Priority Lien Obligations, to the extent that any Account is under the control of the Priority Lien Agent at any time, the Priority Lien Agent will act as gratuitous bailee for (i) the Second Lien Collateral Trustee for the purpose of perfecting the Liens of the Second Lien Secured Parties and (ii) the Third Lien Collateral Agent for the purpose of perfecting the Liens of the Third Lien Secured Parties in such Accounts and the cash and other assets therein as provided in Section 3.01 (but will have no duty, responsibility or obligation to the Second Lien Secured Parties or the Third Lien Secured Parties (including, without limitation, any duty, responsibility or obligation as to the maintenance of such control, the effect of such arrangement or the establishment of such perfection) except as set forth in the last sentence of this Section 5.02(a)). Unless the Second Liens on such Collateral shall have been or concurrently are released, after the occurrence of Discharge of Priority Lien Obligations, the Priority Lien Agent shall, at the request of the Grantors and/or the Second Lien Collateral Trustee, cooperate with the Grantors and the Second Lien Collateral Trustee (at the expense of the Grantors) in permitting control of any other Accounts to be transferred to the Second Lien Collateral Trustee (or for other arrangements with respect to each such Accounts satisfactory to the Second Lien Collateral Trustee to be made).

(b) Following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, to the extent that any Account is under the control of the Second Lien Collateral Trustee at any time, the Second Lien Collateral Trustee will act as gratuitous bailee for the Third Lien Collateral Agent for the purpose of perfecting the Liens of the Third Lien Secured Parties in such Accounts and the cash and other assets therein as provided in Section 3.01 (but will have no duty, responsibility or obligation to the Third Lien Secured Parties (including, without limitation, any duty, responsibility or obligation as to the maintenance of such control, the effect of such arrangement or the establishment of such perfection) except as set forth in the last sentence of this Section 5.02(b)). Unless the Third Liens on such Collateral shall have been or concurrently are released, after the occurrence of Discharge of Second Lien Obligations, the Second Lien Collateral Trustee shall, at the request of the Grantors and/or the Third Lien Collateral Agent, cooperate with the Grantors and the Third Lien Collateral Agent (at the expense of the Grantors) in permitting control of any other Accounts to be transferred to the Third Lien Collateral Agent (or for other arrangements with respect to each such Accounts satisfactory to the Third Lien Collateral Agent to be made).

ARTICLE VI

APPLICATION OF PROCEEDS; DETERMINATION OF AMOUNTS

SECTION 6.01 Application of Proceeds.

(a) Prior to the Discharge of Priority Lien Obligations, and regardless of whether an Insolvency or Liquidation Proceeding has been commenced, Collateral or Proceeds (or any distribution of cash, property or debt or equity securities in full or partial satisfaction or waiver of any claims of any Third Lien Secured Party against any Grantor in any Insolvency or Liquidation Proceeding) received in connection with the enforcement or exercise of any rights or remedies with respect to any portion of the Collateral or received in connection with an Insolvency or Liquidation Proceeding or with respect to the occurrence of any "Change of Control" (or similar term) as such term is defined under any Priority Lien Document, the Second Lien Documents or Third Lien Documents, will be applied:

(i) first, to the payment in full in cash of all Priority Lien Obligations that are not Excess Priority Lien Obligations,

(ii) second, to the payment in full in cash of all Second Lien Obligations,

(iii) third, to the payment in full in cash of all Third Lien Obligations,

(iv) fourth, to the payment in full in cash of all Excess Priority Lien Obligations, and

(v) fifth, to the Company or as otherwise required by applicable law.

For the avoidance of doubt and notwithstanding anything to the contrary contained in this Section 6.01(a), the provisions of this Section 6.01(a) shall not apply to any payments required to be made by the Company or any of its Subsidiaries in connection with any "Change of Control" offer to purchase indebtedness under (x) any Second Lien Documents or (y) unless an Event of Default has occurred and is then continuing under either the Priority Lien Documents or the Second Lien Documents and only to the extent permitted by both the terms of the Priority Lien Documents and the Second Lien Documents, the Third Lien Documents.

(b) Following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, and regardless of whether an Insolvency or Liquidation Proceeding has been commenced, Collateral or Proceeds (or, with respect to any Third Lien Secured Party, any distribution of cash, property or debt or equity securities in full or partial satisfaction or waiver of any claims of any Third Lien Secured Party against any Grantor in any Insolvency or Liquidation Proceeding) received in connection with the enforcement or exercise of any rights or remedies with respect to any portion of the Collateral or received in connection with an Insolvency or Liquidation Proceeding will be applied:

(i) first, to the payment in full in cash of all Second Lien Obligations,

(ii) second, to the payment in full in cash of all Third Lien Obligations,

(iii) third, to the payment in full in cash of all Excess Priority Lien Obligations, and

(iv) fourth, to the Company or as otherwise required by applicable law.

SECTION 6.02 Determination of Amounts. Whenever a Secured Debt Representative shall be required, in connection with the exercise of its rights or the performance of its obligations hereunder, to determine the existence or amount of any Priority Lien Obligations (or the existence of any commitment to extend credit that would constitute Priority Lien Obligations), Second Lien Obligations or Third Lien Obligations, or the existence of any Lien securing any such obligations, or the Collateral subject to any such Lien, it may request that such information be furnished to it in writing by the other Secured Debt Representatives and shall be entitled to make such determination on the basis of the information so furnished; provided, however, that if a Secured Debt Representative shall fail or refuse reasonably promptly to provide the requested information, the requesting Secured Debt Representative shall be entitled to make any such determination by such method as it may, in the exercise of its good faith judgment, determine, including by reliance upon a certificate of the Company. Each Secured Debt Representative may rely conclusively, and shall be fully protected in so relying, on any determination made by it in accordance with the provisions of the preceding sentence (or as otherwise directed by a court of competent jurisdiction) and shall have no liability to the Company or any of its subsidiaries, any Secured Party or any other Person as a result of such determination.

ARTICLE VII

NO RELIANCE; NO LIABILITY; OBLIGATIONS ABSOLUTE; CONSENT OF GRANTORS; ETC.

SECTION 7.01 No Reliance; Information. The Priority Lien Secured Parties, the Second Lien Secured Parties and the Third Lien Secured Parties shall have no duty to disclose to any Third Lien Secured Party, Second Lien Secured Party or to any Priority Lien Secured Party, as the case may be, any information relating to the Company or any of the other Grantors, or any other circumstance bearing upon the risk of non-payment of any of the Priority Lien Obligations, the Second Lien Obligations or the Third Lien Obligations, as the case may be, that is known or becomes known to any of them or any of their Affiliates. In the event any Priority Lien Secured Party, any Second Lien Secured Party or any Third Lien Secured Party, in its sole discretion, undertakes at any time or from time to time to provide any such information to, any Third Lien Secured Party, any Second Lien Secured Party or any Priority Lien Secured Party, as the case may be, it shall be under no obligation (a) to make, and shall not make or be deemed to have made, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of the information so provided, (b) to provide any additional information or to provide any such information on any subsequent occasion or (c) to undertake any investigation.

SECTION 7.02 No Warranties or Liability.

(a) The Priority Lien Agent, for itself and on behalf of the other Priority Lien Secured Parties, acknowledges and agrees that, except for the representations and warranties set forth in Article VIII, (i) neither the Second Lien Collateral Trustee nor any other Second Lien 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 Second Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon and (ii) neither the Third Lien Collateral Agent nor any other Third Lien 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 Third Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon.

(b) The Second Lien Collateral Trustee, for itself and on behalf of the other Second Lien Secured Parties, acknowledges and agrees that, except for the representations and warranties set forth in Article VIII, (i) neither the Priority Lien Agent nor any other Priority Lien 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 Priority Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon and (ii) neither the Third Lien Collateral Agent nor any other Third Lien 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 Third Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon.

(c) The Third Lien Collateral Agent, for itself and on behalf of the other Third Lien Secured Parties, acknowledges and agrees that, except for the representations and warranties set forth in Article VIII, (i) neither the Priority Lien Agent nor any other Priority Lien 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 Priority Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon and (ii) neither the Second Lien Collateral Trustee nor any other Second Lien 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 Second Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon.

(d) The Priority Lien Agent and the other Priority Lien Secured Parties shall have no express or implied duty to the Second Lien Collateral Trustee, any other Second Lien Secured Party, the Third Lien Collateral Agent or any other Third Lien Secured Party, the Second Lien Collateral Trustee and the other Second Lien Secured Parties shall have no express or implied duty to the Priority Lien Agent, any other Priority Lien Secured Party, the Third Lien Collateral Agent or any other Third Lien Secured Party, and the Third Lien Collateral Agent shall have no express or implied duty to the Priority Lien Agent, any other Priority Lien Secured Party, the Second Lien Collateral Trustee or any other Second Lien Secured Party, to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of a default or an event of default under any Priority Lien Document, any Second Lien Document and any Third Lien Document (other than, in each case, this Agreement), regardless of any knowledge thereof which they may have or be charged with.

(e) Each of the Second Lien Collateral Trustee, for itself and on behalf of each other Second Lien Secured Party and the Third Lien Collateral Agent, for itself and on behalf of each other Third Lien Secured Party, hereby waives any claim that may be had against the Priority Lien Agent or any other Priority Lien Secured Party arising out of any actions which the Priority Lien Agent or such Priority Lien Secured Party takes or omits to take (including actions with respect to the creation, perfection or continuation of Liens on any Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any Collateral, and actions with respect to the collection of any claim for all or only part of the Priority Lien Obligations from any account debtor, guarantor or any other party) in accordance with this Agreement and the Priority Lien Documents or the valuation, use, protection or release of any security for such Priority Lien Obligations. The Third Lien Collateral Agent, for itself and on behalf each other Third Lien Secured Party, hereby waives any claim that may be had against the Second Lien Collateral Trustee or any other Second Lien Secured Party arising out of any actions which the Second Lien Collateral Trustee or such Second Lien Secured Party takes or omits to take following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations (including actions with respect to the creation, perfection or continuation of Liens on any Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any Collateral, and actions with respect to the collection of any claim for all or only part of the Second Lien Obligations from any account debtor, guarantor or any other party) in accordance with this Agreement and the Second Lien Documents or the valuation, use, protection or release of any security for such Second Lien Obligations.

SECTION 7.03 Obligations Absolute. The Lien priorities provided for herein and the respective rights, interests, agreements and obligations hereunder of the Priority Lien Agent and the other Priority Lien Secured Parties, the Second Lien Collateral Trustee and the other Second Lien Secured Parties, and the Third Lien Collateral Agent and the other Third Lien Secured Parties shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any Secured Debt Document;

(b) any change in the time, place or manner of payment of, or in any other term of (including the Replacing of), all or any portion of the Priority Lien Obligations, it being specifically acknowledged that a portion of the Priority Lien Obligations consists or may consist of Indebtedness that is revolving in nature, and the amount thereof that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed;

(c) any amendment, waiver or other modification, whether by course of conduct or otherwise, of any Secured Debt Document;

(d) the securing of any Priority Lien Obligations, Second Lien Obligations or Third Lien Obligations with any additional collateral or guarantees, or any exchange, release, voiding, avoidance or non-perfection of any security interest in any Collateral or any other collateral or any release of any guarantee securing any Priority Lien Obligations, Second Lien Obligations or Third Lien Obligations;

(e) the commencement of any Insolvency or Liquidation Proceeding in respect of the Company or any other Grantor; or

(f) any other circumstances that otherwise might constitute a defense available to, or a discharge of, the Company or any other Grantor in respect of the Priority Lien Obligations, the Second Lien Obligations or the Third Lien Obligations.

SECTION 7.04 Grantors Consent. Each Grantor hereby consents to the provisions of this Agreement and the intercreditor arrangements provided for herein and agrees that the obligations of the Grantors under the Secured Debt Documents will in no way be diminished or otherwise affected by such provisions or arrangements (except as expressly provided herein).

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

SECTION 8.01 Representations and Warranties of Each Party. Each party hereto represents and warrants to the other parties hereto as follows:

(a) such party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite power and authority to enter into and perform its obligations under this Agreement;

(b) this Agreement has been duly executed and delivered by such party and

(c) the execution, delivery and performance by such party of this Agreement (i) do not require any consent or approval of, registration or filing with or any other action by any Governmental Authority of which the failure to obtain could reasonably be expected to have a Material Adverse Effect (as defined in the Priority RBL Credit Agreement, as in effect on the date hereof), (ii) will not violate any applicable law or regulation or any order of any Governmental Authority or any indenture, agreement or other instrument binding upon such party which could reasonably be expected to have a Material Adverse Effect (as defined in the Priority RBL Credit Agreement, as in effect on the date hereof) and (iii) will not violate the charter, by-laws or other organizational documents of such party.

SECTION 8.02 Representations and Warranties of Each Representative. Each of the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Agent represents and warrants to the other parties hereto that it is authorized under the Priority Credit Agreement, the Second Lien Collateral Trust Agreement and the Third Lien Collateral Trust Agreement, as the case may be, to enter into this Agreement.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01 Notices. All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(a) if to the Original Priority Lien Agent, to it at:

JPMorgan Chase Bank, N.A.
10 South Dearborn, Floor L2
Chicago, IL 60603-2300
Facsimile: (888) 292-9533
Attention: April Yebd

with a copy to:

JPMorgan Chase Bank, N.A.
2200 Ross Avenue, 3rd Floor
Dallas, TX 75201-2787
Facsimile: (214) 302-8695
Attention: Michele L. Jones, Managing Director

(b) if to the Second Lien Collateral Trustee, to it at:

Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890
Attention: EXCO Resources, Inc. Administrator
Facsimile: 302-636-4145

(c) if to the Original Third Lien Collateral Agent, to it at:

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290

Minneapolis, MN 55402
Facsimile: (612) 217-5651

Attention: Meghan McCauley

(d) if to any other Secured Debt Representative, to such address as specified in the Priority Confirmation Joinder.

Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt (if a business day) and on the next business day thereafter (in all other cases) if delivered by hand or overnight courier service or sent by telecopy or on the date five business days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01. As agreed to in writing among the Company, the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Agent from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable person provided from time to time by such person.

SECTION 9.02 Waivers; Amendment.

(a) No failure or delay on the part of any party hereto in exercising any right or power hereunder 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 a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereto are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on any party hereto in any case shall entitle such party to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be terminated, waived, amended or modified except pursuant to an agreement or agreements in writing entered into by each Secured Debt Representative; provided, however, that this Agreement may be amended from time to time as provided in Section 4.04. Any amendment of this Agreement that is proposed to be effected without the consent of a Secured Debt Representative as permitted by the proviso to the preceding sentence shall be submitted to such Secured Debt Representative for its review at least 5 business days prior to the proposed effectiveness of such amendment.

SECTION 9.03 Actions Upon Breach; Specific Performance.

(a) Prior to the Discharge of Priority Lien Obligations, if any Second Lien Secured Party or Third Lien Secured Party, contrary to this Agreement, commences or participates in any action or proceeding against any Grantor or the Collateral, such Grantor, with the prior written consent of the Priority Lien Agent, may interpose as a defense or dilatory plea the making of this Agreement, and any Priority Lien Secured Party may intervene and interpose such defense or plea in its or their name or in the name of such Grantor and (ii) following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, if any Third Lien Secured Party, contrary to this Agreement, commences or participates in any action or proceeding against any Grantor or the Collateral, such Grantor, with the prior written consent of the Second Lien Collateral Trustee, may interpose as a defense or dilatory plea the making of this Agreement, and any Second Lien Secured Party may intervene and interpose such defense or plea in its or their name or in the name of such Grantor.

(b) (i) Prior to the Discharge of Priority Lien Obligations, should any Second Lien Secured Party or Third Lien Secured Party, contrary to this Agreement, in any way take, attempt to or threaten to take any action with respect to the Collateral (including any attempt to realize upon or enforce any remedy with respect to this Agreement), or take any other action in violation of this Agreement or fail to take any action required by this Agreement, the Priority Lien Agent or any other Priority Lien Secured Party (in its own name or in the name of the relevant Grantor) or the relevant Grantor, with the prior written consent of the Priority Lien Agent, (A) may obtain relief against such Second Lien Secured Party or Third Lien Secured Party, as applicable, by injunction, specific performance and/or other appropriate equitable relief, it being understood and agreed by each of the Second Lien Collateral Trustee on behalf of each Second Lien Secured Party and the Third Lien Collateral Agent on behalf of each Third Lien Secured Party that (I) the Priority Lien Secured Parties' damages from its actions may at that time be difficult to ascertain and may be irreparable, and (II) each Second Lien Secured Party and Third Lien Secured Party waives any defense that the Grantors and/or the Priority Lien Secured Parties cannot demonstrate damage and/or be made whole by the awarding of damages, and (B) shall be entitled to damages, as well as reimbursement for all reasonable and documented costs and expenses incurred in connection with any action to enforce the provisions of this Agreement and (ii) following the Discharge of Priority Lien Obligations but prior to the Discharge of Second Lien Obligations, should any Third Lien Secured Party, contrary to this Agreement, in any way take, attempt to or threaten to take any action with respect to the Collateral (including any attempt to realize upon or enforce any remedy with respect to this Agreement), or take any other action in violation of this Agreement or fail to take any action required by this Agreement, the Second Lien Collateral Trustee or any other Second Lien Secured Party (in its own name or in the name of the relevant Grantor) or the relevant Grantor, with the prior written consent of the Second Lien Collateral Trustee, (A) may obtain relief against such Third Lien Secured Party by injunction, specific performance and/or other appropriate equitable relief, it being understood and agreed by the Third Lien Collateral Agent on behalf of each Third Lien Secured Party that (I) the Second Lien Secured Parties damages from its actions may at that time be difficult to ascertain and may be irreparable, and (II) each Third Lien Secured Party waives any defense that the Grantors and/or the Second Lien Secured Parties cannot demonstrate damage and/or be made whole by the awarding of damages, and (B) shall be entitled to damages, as well as reimbursement for all reasonable and documented costs and expenses incurred in connection with any action to enforce the provisions of this Agreement.

SECTION 9.04 Parties in Interest. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, as well as the other Secured Parties, all of whom are intended to be bound by, and to be third party beneficiaries of, this Agreement.

SECTION 9.05 Survival of Agreement. All covenants, agreements, representations and warranties made by any party in 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.

SECTION 9.06 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

SECTION 9.07 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 9.08 Governing Law; Jurisdiction; Consent to Service of Process. (a) THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES (BUT GIVING EFFECT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATION LAW).

(b) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, 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 law, in 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 shall affect any right that any party hereto may otherwise have to bring any action or proceeding relating to this Agreement in the courts of any jurisdiction.

(c) Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which 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 paragraph (b) of this Section 9.08. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by 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 service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.09 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY 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 OR RELATING TO THIS AGREEMENT. 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 BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.10 Headings. Article, Section and Annex headings used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 9.11 Conflicts. In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any Secured Debt Documents, the provisions of this Agreement shall control; provided, however, that if any of the provisions of the Third Lien Security Documents limit, qualify or conflict with the duties imposed by the provisions of the TIA, in each case, the TIA shall control.

SECTION 9.12 Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the distinct and separate relative rights of the Priority Lien Secured Parties, the Second Lien Secured Parties and the Third Lien Secured Parties. None of the Company, any other Grantor or any other creditor thereof shall have any rights or obligations hereunder, except as expressly provided in this Agreement (provided that nothing in this Agreement is intended to or will amend, waive or otherwise modify the provisions of the Priority Credit Agreement, the Second Lien Indenture, the Additional Second Lien Documents or the Third Lien Documents, as applicable), and except as expressly provided in this Agreement neither the Company nor any other Grantor may rely on the terms hereof (other than Sections 4.01, 4.02, 4.04, or 4.05, Article VII and Article IX). Nothing in this Agreement is intended to or shall impair the obligations of the Company or any other Grantor, which are absolute and unconditional, to pay the Obligations under the Secured Debt Documents as and when the same shall become due and payable in accordance with their terms. Notwithstanding anything to the contrary herein or in any Secured Debt Document, the Grantors shall not be required to act or refrain from acting pursuant to this Agreement, any Priority Lien Document, any Second Lien Document or any Third Lien Document with respect to any Collateral in any manner that would cause a default under any Priority Lien Document.

SECTION 9.13 Certain Terms Concerning the Second Lien Collateral Trustee and the Third Lien Collateral Agent.

(a) The Second Lien Collateral Trustee is executing and delivering this Agreement solely in its capacity as such and pursuant to directions set forth in the Second Lien Indenture; and in so doing, the Second Lien Collateral Trustee shall not be responsible for the terms or sufficiency of this Agreement for any purpose. The Second Lien Collateral Trustee shall have no duties or obligations under or pursuant to this Agreement other than such duties and obligations as may be expressly set forth in this Agreement as duties and obligations on its part to be performed or observed. Notwithstanding anything to the contrary contained in this

Agreement, for purposes of clarity and avoidance of doubt, the Second Lien Collateral Trustee shall have no duties or obligations with respect to covenants and agreements made by or on behalf of any other Second Lien Secured Party in this Agreement**.** In entering into this Agreement, or in taking (or forbearing from) any action under or pursuant to the Agreement, the Second Lien Collateral Trustee shall have and be protected by all of the rights, immunities, indemnities and other protections granted to it under the Second Lien Indenture and the other Second Lien Documents (including, without limitation, Article 10 of the Second Lien Indenture and Article 5 of the Second Lien Collateral Trust Agreement). Anything herein to the contrary notwithstanding, whenever reference is made in this Agreement to any action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Second Lien Collateral Trustee or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Second Lien Collateral Trustee, it is understood that in all cases the Second Lien Collateral Trustee shall be acting, giving, withholding, suffering, omitting, taking or otherwise undertaking and exercising the same (or shall not be undertaking and exercising the same), in each case in accordance with the Second Lien Documents. This provision is intended solely for the benefit of the Second Lien Collateral Trustee and its successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto.

(b) The Third Lien Collateral Agent is executing and delivering this Agreement solely in its capacity as such and pursuant to directions set forth in the Third Lien Collateral Trust Agreement and other Third Lien Documents; and in so doing, the Third Lien Collateral Agent shall not be responsible for the terms or sufficiency of this Agreement for any purpose. The Third Lien Collateral Agent shall have no duties or obligations under or pursuant to this Agreement other than such duties and obligations as may be expressly set forth in this Agreement as duties and obligations on its part to be performed or observed. Notwithstanding anything to the contrary contained in this Agreement, for purposes of clarity and avoidance of doubt, the Third Lien Collateral Agent shall have no duties or obligations with respect to covenants and agreements made by or on behalf of any Third Lien Secured Party in this Agreement. In entering into this Agreement, or in taking (or forbearing from) any action under or pursuant to the Agreement, the Third Lien Collateral Agent shall have and be protected by all of the rights, immunities, indemnities and other protections granted to it under the Third Lien Collateral Trust Agreement and other Third Lien Documents. Anything herein to the contrary notwithstanding, whenever reference is made in this Agreement to any action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Third Lien Collateral Agent or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Third Lien Collateral Agent, it is understood that in all cases the Third Lien Collateral Agent shall be acting, giving, withholding, suffering, omitting, taking or otherwise undertaking and exercising the same (or shall not be undertaking and exercising the same), in each case in accordance with the Third Lien Documents. This provision is intended solely for the benefit of the Third Lien Collateral Agent and its successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto.

SECTION 9.14 Certain Terms Concerning the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Agent.

(a) Notwithstanding anything to the contrary contained in this Agreement, none of the Priority Lien Agent, the Second Lien Collateral Trustee or the Third Lien Collateral Agent shall have any liability or responsibility for the actions or omissions of any other Secured Party, or for any other Secured Party's compliance with (or failure to comply with) the terms, covenants and agreements set forth in this Agreement. None of the Priority Lien Agent, the Second Lien Collateral Trustee or the Third Lien Collateral Agent shall have individual liability to any Person if it shall mistakenly pay over or distribute to any Secured Party (or the Company or any other Grantor) any amounts in violation of the terms of this Agreement, so long as the Priority Lien Agent, the Second Lien Collateral Trustee or the Third Lien Collateral Agent, as the case may be, is acting in good faith.

(b) Each party hereto hereby acknowledges and agrees that each of the Priority Lien Agent, the Second Lien Collateral Trustee and the Third Lien Collateral Agent is entering into this Agreement solely in its capacity under the Priority Lien Documents, the Second Lien Documents and the Third Lien Documents, respectively, and not in its individual capacity.

(c) The Priority Lien Agent shall not be deemed to owe any fiduciary duty to (i) the Second Lien Collateral Trustee or any Second Lien Representatives or any other Second Lien Secured Party or (ii) the Third Lien Collateral Agent or any other Third Lien Representative or any other Third Lien Secured Party.

(d) The Second Lien Collateral Trustee shall not be deemed to owe any fiduciary duty to (i) the Priority Lien Agent or any other Priority Lien Secured Party or (ii) the Third Lien Collateral Agent or any other Third Lien Representative or any other Third Lien Secured Party.

(e) The Third Lien Collateral Agent shall not be deemed to owe any fiduciary duty to (i) the Priority Lien Agent or any other Priority Lien Secured Party or (ii) the Second Lien Collateral Trustee or any Second Lien Representatives or any other Second Lien Secured Party.

SECTION 9.15 Authorization of Secured Agents. By accepting the benefits of this Agreement and the other Priority Lien Security Documents, each Priority Lien Secured Party authorizes the Priority Lien Agent to enter into this Agreement and to act on its behalf as collateral agent hereunder and in connection herewith. By accepting the benefits of this Agreement and the other Second Lien Security Documents, each Second Lien Secured Party authorizes the Second Lien Collateral Trustee to enter into this Agreement and to act on its behalf as collateral agent hereunder and in connection herewith. By accepting the benefits of this Agreement and the other Third Lien Security Documents, each Third Lien Secured Party authorizes the Third Lien Collateral Agent to enter into this Agreement and to act on its behalf as collateral agent hereunder and in connection herewith.

SECTION 9.16 Further Assurances. Each of the Priority Lien Agent, for itself and on behalf of the other Priority Lien Secured Party, the Second Lien Collateral Trustee, for itself and on behalf of the other Second Lien Secured Parties, the Third Lien Collateral Agent, for itself and on behalf of the other Third Lien Secured Parties, and each Grantor party hereto, for itself and on behalf of its subsidiaries, agrees that it will execute, or will cause to be executed, any and all further documents, agreements and instruments, and take all such further actions, as may be required under any applicable law, or which the Priority Lien Agent, the Second Lien Collateral Trustee or the Third Lien Collateral Agent may reasonably request, to effectuate the terms of this Agreement, including the relative Lien priorities provided for herein.

SECTION 9.17 Relationship of Secured Parties. Nothing set forth herein shall create or evidence a joint venture, partnership or an agency or fiduciary relationship among the Secured Parties. None of the Secured Parties nor any of their respective directors, officers, agents or employees shall be responsible to any other Secured Party or to any other Person for any Grantor's solvency, financial condition or ability to repay the Priority Lien Obligations, the Second Lien Obligations or the Third Lien Obligations, or for statements of any Grantor, oral or written, or for the validity, sufficiency or enforceability of the Priority Lien Documents, the Second Lien Documents or the Third Lien Documents, or any security interests granted by any Grantor to any Secured Party in connection therewith. Each Secured Party has entered into its respective financing agreements with the Grantors based upon its own independent investigation, and none of the Priority Lien Agent, the Second Lien Collateral Trustee or the Third Lien Collateral Agent makes any warranty or representation to the other Secured Debt Representatives or the Secured Parties for which it acts as agent nor does it rely upon any representation of the other agents or the Secured Parties for which it acts as agent with respect to matters identified or referred to in this Agreement.

SECTION 9.18 Reciprocal Rights 1.1. The parties agree that the provisions of Sections 2.01(c) (but, for the purposes of this Section 9.18, without giving effect to the reference to the Priority Lien Cap therein), 3 (exercise of remedies), 4 (other than with respect to any Second Lien DIP Financing or any Permitted Junior DIP Financing), 5.01, 5.02, 7.02(e), and 9.03, including, as applicable, the defined terms referenced therein (but only to the extent used therein), which govern the relationship, and certain rights, restrictions, and agreements, between the Priority Lien Agent and the other Priority Lien Secured Parties with respect to the Priority Lien Debt, on the one hand, and the Second Lien Collateral Trustee and the other Second Lien Secured Parties with respect to the Second Lien Debt, on the other hand, shall, from and after the Discharge of Priority Lien Obligations and until the Discharge of the Second Lien Obligations, apply to and govern, *mutatis mutandis*, the relationship between and among (A) the Second Lien Collateral Trustee and the other Second Lien Secured Parties with respect to the Second Lien Debt, on the one hand (which, for purposes of this Section 9.18 shall be treated for all purposes as the Priority Lien Debt, the Priority Lien Agent and the other Priority Lien Secured Parties as referenced in such aforementioned provisions), (B) the Third Lien Collateral Agent and the other Third Lien Secured Parties with respect to the Third Lien Debt (which, for purposes of this Section 9.18 shall be treated for all purposes as the Second Lien Debt, the Second Lien Agent and the other Second Lien Secured Parties as referenced in such aforementioned provisions) and (C) Priority Lien Agent and the other Priority Lien Secured Parties with respect to the Excess Priority Lien Obligations (which, for purposes of this Section 9.18 shall, for the avoidance of doubt, remain treated for all purposes as the Excess Priority Lien Obligations as referenced in such aforementioned provisions).

[SIGNATURES BEGIN NEXT PAGE]

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.

JPMORGAN CHASE BANK, N.A., as
Original Priority Lien Agent

By: /s/ David Morris
Name: David Morris
Title: Authorized Officer

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Second Lien Collateral Trustee

By: /s/ Michael H. Wass
Name: Michael H. Wass
Title: Vice President

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Original Third Lien Collateral Agent

By: /s/ Renee Kuhl
Name: Renee Kuhl
Title: Vice President

ACKNOWLEDGED AND AGREED AS OF THE DATE FIRST ABOVE WRITTEN:

GRANTORS:

EXCO RESOURCES, INC.

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

EXCO HOLDING (PA), INC.
EXCO PRODUCTION COMPANY (PA), LLC
EXCO PRODUCTION COMPANY (WV), LLC
EXCO RESOURCES (XA), LLC
EXCO SERVICES, INC.
EXCO MIDCONTINENT MLP, LLC
EXCO PARTNERS GP, LLC
EXCO PARTNERS OLP GP, LLC
EXCO HOLDING MLP, INC.
EXCO LAND COMPANY, LLC

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

EXCO OPERATING COMPANY, LP

By: EXCO Partners OLP GP, LLC,
its general partner

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

EXCO GP PARTNERS OLD, LP

By: EXCO Partners GP, LLC,
its general partner

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

RAIDER MARKETING, LP

By: Raider Marketing GP, LLC,
its general partner

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

RAIDER MARKETING GP, LLC

By: /s/ Tyler Farquharson
Name: Tyler Farquharson
Title: Vice President, Chief Financial Officer and Treasurer

EXHIBIT E

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 17-23931-rdd

- -x

In the Matter of:

GLOBAL A&T ELECTRONICS LTD., et al.

Debtors.

- -x

United States Bankruptcy Court

300 Quarropas Street

White Plains, New York

January 3, 2018

10:12 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

Notice of Hearing on the Motion of JPMorgan Chase & Co. to Stay the Confirmation Order Pending Appeal (document #66)

Motion for Stay Pending Appeal JPMorgan Chase & Co. Motion to Stay the Confirmation Order Pending Appeal (related document 62) filed by Brian D. Glueckstein on behalf of JPMorgan Chase & Co. (document #64)

Transcribed by: Hana Copperman

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P R O C E E D I N G S

THE COURT: Okay. Good morning. In re Global A&T Electronics Ltd., et al.

MR. GLUECKSTEIN: Good morning, Your Honor.

THE COURT: Good morning.

MR. GLUECKSTEIN: For the record, Brian Glueckstein of Sullivan & Cromwell on behalf of JPMorgan Chase. Your Honor, we're here this morning on JPMorgan's motion to stay the confirmation order entered on December 22nd pending appeal with respect to the releases as applied to JPMorgan Chase's claims against the debtors. And I appreciate Your Honor hearing this motion on an expedited basis.

Your Honor, from our perspective, the need for filing the motion as we did was caused by our understanding, based on the comments made at the confirmation hearing, that the debtors intended to imminently close the transaction following entry of the confirmation order.

As I'm sure Your Honor is aware, JPMorgan filed the notice of appeal within hours of the confirmation order being entered and intends to pursue its appeal promptly. As far as we know, the closing has not yet taken place with respect to the transaction approved by the confirmation order.

In any event, Your Honor, JPMorgan has no interest in derailing the debtors' restructuring. At the same time, JPMorgan believes it has a valid valuable contractual

indemnification claim under the exchange agreement that cannot be released under the circumstances.

We understand the Court heard arguments at the confirmation hearing and disagreed. That, however, is not dispositive of the issue before the Court today, as it could not be, given that Rule 8007 requires JPMorgan to seek relief from this Court in the first instance with respect to a stay.

Your Honor, we respectfully submit that the Court has discretion under Rule 8007(e) to fashion such relief as appropriate during the pendency of the appeal, which is the language of the Rule, to protect the rights of all parties-in-interest. And we believe, Your Honor, that it is certainly possible, and, we think, appropriate, for Your Honor to issue a stay with respect to the limited relief as to the releases with respect to JPMorgan Chase.

The debtors, in their objection filed yesterday, cite to the Court's comments with respect to the need for eliminating the litigation overhead with respect to the plan and that the releases generally being essential to the reorganization.

As I asserted at the confirmation hearing, Your Honor, JPMorgan is not interested in pursuing affirmative claims or restarting state court litigation or litigation otherwise but rather to have the opportunity for its contractual rights to indemnity to be preserved and now to be considered on appeal.

It is contrary to the debtors' assertions, we submit; the preservation of JPMorgan's claims are hardly restarting the crippling litigation overhead the Court referenced at the confirmation hearing.

As I noted at the confirmation hearing, Your Honor, if Bain (ph.) wishes to clarify that they are not asserting claims against JPMorgan and obviate the need for JPMorgan to retain its indemnification rights, as a supporting noteholder in these proceedings they certainly have the ability to do so. They remained silent at the confirmation hearing and have not responded to JPMorgan's outreach since entry of the confirmation order to request clarification as to Bain's intentions.

With respect to the relief before the Court today, Your Honor, the standard for stay pending appeal is obviously very well known to the Court, and I won't take time with it today. This Court, and others in the Circuit, have opined that the Court is to balance the factors, the four factor test, with a particular focus on irreparable injury to the movant and the likelihood of success on the merits. And we would submit, Your Honor, based on our understanding, that we still assume that closing is imminent with respect to the transaction, that the potential of JPMorgan having its appeal mooted by consummation of the plan is a potential irreparable harm.

THE COURT: Is there any case that has actually held

that?

MR. GLUECKSTEIN: I think, Your Honor, I think in the debtors' briefing yesterday, we would submit, Your Honor, goes to the idea that irreparable harm is not the basis -- I'm sorry -- the risk of equitable mootness is not the basis for irreparable harm.

Your Honor, I think in more recent case law, I think, as Your Honor recognized in his 2014 bench ruling in Momentive, there's a lack of clarity on this point, and I think it's certainly accepted that the possibility of mootness on an equitable basis shouldn't be disregarded and is an important factor in considering whether a movant is harmed.

And I would note, Your Honor, in a 2016 decision by Judge Wiles, more recently than the cases cited by the debtors, in Daebo International Shipping Judge Wiles there held that the loss of appellate rights is a quintessential form of prejudice warranting a finding of irreparable harm.

So I think, Your Honor, it's certainly, and I think that the cases suggest that there are differing views as to how much weight the question of risk, of equitable mootness to be given, I think it certainly is an important factor here.

And certainly, from our perspective, Your Honor, we believe, and I want to state clearly for the record, we don't believe that there would be a valid equitable mootness argument here. We think the reinstatement of JPMorgan's claims on

appeal would be a viable remedy to be fashioned. But we certainly understand the position that the debtors have taken, that JPMorgan can't be carved out from the release, and we have no doubt that they are at least setting up the potential for that argument. I highly doubt they're going to stand up today and say they're not intending, or that they will not argue equitable mootness. Certainly if they were, or if the Court would offer an opinion on the issue of equitable mootness, I think JPMorgan would reassess its view on irreparable harm. But I think, as we sit here today, that risk remains significant, and we view it as harm to JPMorgan under the circumstances.

I think certainly in addition, Your Honor, the release of JPMorgan's indemnification claims, potentially, at least, as exposed to unknown claims by Bain, understand Your Honor's views with respect to benefits under the plan that was discussed at length at the confirmation hearing, but nonetheless we view the combination of those factors as presenting irreparable harm that we believe is imminent again, based on our understanding that the closing is, in fact, imminent.

Your Honor, if I could just address for a moment the question of substantial possibility for success, which, as the Court knows, is the second factor looked at in the movant's application. We certainly understand the findings made by this

Court with respect to the appropriateness of the release of JPMorgan's indemnification claims. We have no expectation and have no interest in revisiting that discussion with respect to the relief requested today. But as Your Honor knows, the standard with respect to a stay is only substantial possibility of success on appeal, not a likelihood of success.

And, Your Honor, while the debtors' objection attempts to summarily dismiss the arguments around their failure to classify JPMorgan's claims as required by Section 1123(a)(1) and the failure to solicit votes from former noteholders such as JPMorgan with respect to its unsecured claims, we submit that these are important questions that we believe an appellate court will consider in the context of the releases being granted here. And again, that with -- specifically with respect to the fact that we are releasing claims as against the debtors as they are released parties -- the debtors, the estate, and the reorganized debtors -- pursuant to the third-party release provision in the plan.

The debtors chose not to solicit holders of unsecured claims, instead deeming them to accept, because claims were to be unimpaired under 1124. There was colloquy at the confirmation hearing, and in response to questions from the Court, debtors' counsel suggested that JPMorgan's claims were either Class 4 additional noteholder claims, or perhaps not claims at all, because they believe they have defenses to the

claims, but neither explanation works, in our view, under the plan as drafted. And so we believe, Your Honor, that an appellate court may look at that issue differently with respect to how we got to the point of releasing the claims in connection with the plan, and we believe the issues around classification and solicitation are, in fact, very important issues.

Your Honor, I just want to note for -- pause for a moment, because there's much discussion on the debtors' objection. I'm sure we'll hear today from debtors' counsel with respect to the harm to the other stakeholders with respect to the potential for a stay. And the debtors assert that simply if a stay is issued here, and the plan cannot be consummated, or will not be consummated if a stay is issued, that the company potentially will liquidate and all stakeholders will be irreparably harmed.

As I noted at the outset, Your Honor, we submit that the Court has the ability to fashion a more narrow scope of stay, that there's a great deal of discretion for the Court, and this is not a situation where we are, as comes up in many circumstances, looking to hold up distributions to creditors or escrow monies or anything of the sort. This is a question of whether or not the application of the release, as we see it, applies to JPMorgan Chase.

There was quite a bit of discussion at the

confirmation hearing about the possibility that if there was -- JPMorgan's complaints were to survive, there was untold numbers of former noteholders who would have such claims. We would submit, at this point, Your Honor, the debtors have obtained the releases from everyone other than JPMorgan Chase. Either those holders were either satisfied with the relief provided under the plan, or otherwise waived their rights to object, having not come forward.

So I think the parties and the debtors can look at the situation and see that we are talking about a limited indemnification claim with respect to JPMorgan. And we submit, Your Honor, that if the Court fashioned relief limited to those circumstances, that the parade of horribles suggested by the debtors is very unlikely to come to fruition.

And so we would ask, Your Honor, under the circumstances, to issue a limited stay with respect to JPMorgan and the releases contained in Article VIII(F) of the plan.

THE COURT: You haven't addressed the bond point.

MR. GLUECKSTEIN: So with respect to the bond issue, again, we submit, Your Honor, with respect to the narrow scope of the relief that we are requesting, as we set out in our papers, we don't believe that a bond is necessary here. Certainly in the event that the Court disagrees, we would submit that any bond that would be required should be tailored to the loss from JPMorgan's indemnification claim itself, which

we believe is likely to be relatively modest.

I think the debtors' suggestion that a bond requires 700 million dollars plus of an insurance policy of the entirety of the plan plus, apparently, having JPMorgan pay the cost of these cases going forward, is wholly without merit and is clearly intended to be punitive under the circumstances. Certainly to the extent that the Court would hold today that the only impediment to the limited stay that we're requesting is some sort of reasonable bond, JPMorgan obviously would consider that.

THE COURT: So your argument's really premised on the notion that this settlement is, as far as it applies to JPMorgan, is not material.

MR. GLUECKSTEIN: Oh, we don't think it is. And I think, Your Honor, we're in a slightly different position than we were when we were in front of Your Honor on December 21st. I think the debtors were concerned -- we were talking about a situation where if our objection to the plan was successful, there was a situation where there was untold potential claims and litigation coming forward.

I think we are at a place now, having us been the only objector pursuing an appeal at this point, that the scope of loss, or potential loss from any claim of indemnity that might materialize as a result of us continuing to pursue that claim, is quite limited.

And again, Your Honor, I think it's critical that, you know, we understand that the debtors' view is, perhaps, that if any stay at all were to be issued here that the transaction just isn't going to close. We don't believe that to be the case, but, of course, we understand that the debtors' taking steps to proceed with the closing. But, in any event, given the discretion that the Court has under Rule 8007, we do think, under the circumstances here, that we're talking only about a release of claims against one particular party, that an appropriate scope of order could be fashioned by the Court, and, if so, limited, we believe, any potential loss would be, in fact, quite limited, and any such bond should be so appropriately tailored.

THE COURT: Okay.

MR. GLUECKSTEIN: Thank you, Your Honor.

MR. NASH: Your Honor, Pat Nash, Kirkland & Ellis, for the debtors. Any questions for us here, Judge? I mean, we --

THE COURT: Well, yes. It's clear to me from the motion papers, as well as Mr. Glueckstein's oral argument, that the focus here, their request for a stay, is solely as to the provision of Section VIII(F), the "Third-Party Release by the Other Releasing Parties", under the plan of the debtor, of claims against the debtor.

And, frankly, I have two related observations on that point. The first is I'm really not sure, as a matter of law,

whether a party can be compelled to release a claim against a debtor, as opposed to having the claim be dealt with in a plan and released as part of a discharge.

And secondly, relatedly, it appears to me, having gone through the release provision in some detail, or with having read it now about six times since the confirmation hearing, when I read it a couple of times, it seems to me that that release provision itself preserves all releasing parties -- the other releasing parties' -- it's a defined term -- rights under the plan.

MR. NASH: Yes, sir.

THE COURT: So it would seem to me that now that it's clear that JPM is just focusing on the issue of whether the debtor is being released, that it's only being released to the extent that the plan doesn't treat their claim. And it seems to me it treats their claim as a Class 5 creditor.

MR. NASH: Yes, Judge.

THE COURT: So to me, the plan actually does protect them on an actual claim that they would have against the debtor. It doesn't protect them as to rights that a third party might have against them or claims they may have against it. It does -- they do -- the claims they have against a third party are released.

MR. NASH: Or arguments that they may be able to make as to that third party, Your Honor --

THE COURT: Right. Exactly.

MR. NASH: -- on account of this plan.

THE COURT: Right. So --

MR. NASH: Which are preserved.

THE COURT: Right. So to me, I guess this was something I just missed or just got wrong, misunderstood. When we talk about third-party releases, it leads to the potential for sloppy thinking, because it could be releases by third parties or of third parties. But I don't see how it could be of the debtor. It could be of affiliates of the debtor, of the debtors' officers and directors, but I don't see how it could actually be of the debtor.

So it seems to me -- and clearly the focus here, as Mr. Glueckstein said, is a release of one particular party, i.e. the debtor, that really that aspect, to the extent -- put it differently. To the extent the confirmation order deems the debtor being released beyond the release in VIII(F), i.e. beyond or taking away JPM's rights, to the extent they have rights as a creditor under Class 5, that was in error. It's not really a stay issue. I think it's a Rule 9023 issue, to clarify that.

Now, they ultimately may not have any rights, because you may be able to object to their claim under 502(e), or on the merits separate from 502(e). And the language that I put in the order was intended to preserve those rights. It wasn't

a determination of those rights, but "to the extent that" -- that's the phrase that's in the confirmation order, paragraph -- I'll find it -- the paragraph dealing with JPM's objection -- you could object to their claim.

MR. NASH: It's a nonbankruptcy bankruptcy, Your Honor, for every party other than --

THE COURT: Right. So it seems to me that the proper result here should be a modification of the order, to make it clear that the -- which is, I think, clear in the plan itself -- the release by JPM of the debtor is as stated in the last sentence of that very release provision,

"Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-effective date obligations of any party or any entity under the plan".

And that would include as a Class 5 creditor.

MR. GLUECKSTEIN: Your Honor, if I may? Brian Glueckstein again for JPMorgan. I just want to make sure I'm clear on where Your Honor is headed, because Your Honor is -- Class 5, which is supposed to be unimpaired claims that ride through.

THE COURT: Right. Right.

MR. GLUECKSTEIN: We had a four-hour argument, at which Mr. Nash was arguing --

THE COURT: I know. I understand.

MR. GLUECKSTEIN: -- that our claim had to be released as to the debtor.

THE COURT: I understand. And I think the problem there was there were two aspects of the release, only one of which you're pursuing at this point, and frankly, it wasn't that clear in your objection the first time. They're releases of third parties.

MR. GLUECKSTEIN: There are, Your Honor.

THE COURT: And I don't see any issue there. And I would deny your motion if you're looking for a stay as to releases of third parties by JPM.

And then, frankly, there was -- you're right. There was discussion of the release of the debtor. And to me, economically, it didn't make any sense to be fighting that issue, but as a practical matter of bankruptcy law and the plan itself, I don't think -- I think you're right. And you were right. That claim can't be released. It can be disallowed in the future if the facts warrant it, but it can't be released under a plan, because plans don't release claims against the debtor except as part of the treatment of those claims.

MR. GLUECKSTEIN: We agree, Your Honor. And so certainly to the extent that the order is modified to make clear, and we understand, and we had that discussion at the confirmation hearing --

THE COURT: Right.

MR. GLUECKSTEIN: To the extent the debtor --

THE COURT: No, I understand why you're a little bit baffled, because I got it wrong clearly on that point.

MR. GLUECKSTEIN: But to the extent --

THE COURT: I was really focusing on the true third-party release primarily and just the economics of releasing -- of why you would want to preserve a claim against the debtor, because it would seem to me that it would never actually come back to hurt you, since the litigation's being released, the state court litigation.

But that's neither here nor there. As a matter of bankruptcy law and the plan itself, the claim against the debtor, to the extent allowed, it survives. It could be dealt with in the plan, but the plan actually unimpairs it.

MR. GLUECKSTEIN: Right. Okay. I mean, certainly -- look, from our perspective, if that modification is made, I think we did object to both pieces.

THE COURT: Right.

MR. GLUECKSTEIN: We objected to the releases of the debtor, the third-party release, but our focus of our motion to stay --

THE COURT: Right.

MR. GLUECKSTEIN: -- is with respect to the claim against the debtor. And as I said --

THE COURT: And frankly, when you read the plan

objection, there's really just one sentence that doesn't really say why there's a problem with the true third-party release, and there isn't. So I just don't, I mean, I don't --

Anyway, you were right. The part seeking a stay is as to the release of the debtor. But the only real statement of any argument is on the claims against parties other than the debtor is in paragraph 9, which says,

"Moreover, JPMC may have its own claims against Bain or other released parties, and as a result of the GSL litigation or otherwise, concerning matters that are included within the scope of the purported third-party release."

But there's nothing to back that up, and I find it hard to believe that there would be any such claims.

But, in any event, the record clearly supports, under the Metromedia standard, that release. What it doesn't support is a release of the debtor.

And frankly, it's not in -- the plan doesn't -- the plan preserves JPM's rights, as it does every other creditor's rights under the plan and as a Class 5 creditor.

MR. GLUECKSTEIN: Well, and, Your Honor --

THE COURT: In JPM's case.

MR. GLUECKSTEIN: I understood there was confusion on this point. That was our position. We had discussions with the debtor prior to the confirmation hearing --

THE COURT: All right.

MR. GLUECKSTEIN: -- to put clarifying language to that effect into the plan.

THE COURT: Well, anyway.

MR. GLUECKSTEIN: And they refused.

THE COURT: You've gotten what you wanted.

MR. GLUECKSTEIN: Okay.

THE COURT: And you should have gotten that at the confirmation hearing. I was focused on the third-party release point and the economics of the deemed release of the debtor, as opposed to the law and the terms of the plan itself.

And so I'm going to deny the motion for a stay as moot, and invite the debtors to submit an amended confirmation order that just simply makes it clear that JPM's objection as to the release of all parties other than the debtor is overruled and that the plan itself renders moot JPM's objection as to the release of the debtor, because it would be treated as a Class 5 claim in the last sentence of Section VIII(F) of the plan, subject, of course, to the debtors' rights, or any parties' rights under 502(e) and/or any other basis to object to the claim, and JPM's rights to oppose such objection.

MR. NASH: Your Honor, do you think we need to submit a new order, because otherwise we're prepared to go effective.

THE COURT: I think the record will -- I mean, you could submit it in the future. I think you can act on what I ruled on.

MR. NASH: Thank you.

THE COURT: I mean what's in -- you could act in reliance on that ruling.

MR. NASH: Thank you, Judge.

THE COURT: And that's what the plan says anyway, so --

MR. NASH: I agree, Your Honor. Thank you.

THE COURT: Okay.

MR. MOELLER-SALLY: Good morning, Your Honor. Stephen Moeller-Sally, Ropes & Gray, for the additional ad hoc noteholder group. Just wanted to state for the record that our group, as do the other parties under the restructuring support agreement, have consent rights over the final form of the confirmation order, so we would expect --

THE COURT: Sure.

MR. MOELLER-SALLY: -- to see a revision of that and have our clients have an opportunity to approve it before it gets --

THE COURT: That's fine. And I think that's why debtors' counsel made the point he made. There's no reason to hold up the closing of the plan over that review process, which needs to be careful, because, again, I think all I'm saying here is that as to the release of the debtor, that release stands, but the release by its own terms is subject to JPM's treatment under the plan, as it is -- as is subject to every

other creditors' treatment under the plan, which is, in JPM's case under -- as a Class 5 creditor.

MR. MOELLER-SALLY: Thank you.

THE COURT: Okay.

MR. NASH: Thank you, Your Honor. We really appreciate it.

THE COURT: Okay. And then I'll also expect an order denying the motion for a stay as moot.

MR. NASH: Yes, sir. Thank you very much.

THE COURT: Okay. All right. Thank you.

MR. GLUECKSTEIN: Thank you, Your Honor.

THE COURT: By the way, there's no doubt I can do this under Rule 9023 sua sponte. The case law is clear on that point, as is, I think, the rule itself. But, for example, see In re Blutrich Herman & Miller, 227 B.R. 53 (Bankr. S.D.N.Y. 1998).

MR. NASH: Thank you, sir.

THE COURT: Okay.

MR. GLUECKSTEIN: Thank you, Your Honor.

THE COURT: Okay.

(Whereupon these proceedings were concluded at 10:41 AM)

I N D E X

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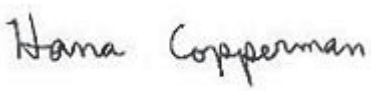
C E R T I F I C A T I O N

I, Hana Copperman, certify that the foregoing transcript is a true and accurate record of the proceedings.



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New York, NY 10001

Date: January 8, 2018

EXHIBIT F

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 18-13374-mew

- x

In the Matter of:

AEGEAN MARINE PETROLEUM NETWORK INC,

Debtor.

- x

United States Bankruptcy Court

One Bowling Green

New York, NY 10004

March 26, 2019

2:04 PM

B E F O R E :

HON MICHAEL E. WILES

U.S. BANKRUPTCY JUDGE

ECRO: MATTHEW

HEARING re Application for compensation by Oaktree Capital Management, LP and Hartree Partners, LP
Objection filed

HEARING re Motion authorizing rejection of certain unexpired leases and granting related relief

HEARING re Confirmation hearing

HEARING re Objection by the UST filed

Transcribed by: Sonya Ledanski Hyde

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AARON METVINER
JASON B. SANJANA
SCOTT GREISSMAN
CAITLIN M. GRIFFIN
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P R O C E E D I N G S

MR. KIESELSTEIN: We're here with a three-item agenda, the first and the main event is seeking confirmation of our plan of reorganization. The second is our rejection motion which was unopposed but which we would like to continue to the next omnibus so commercial discussions can continue. And then third is the Oaktree substantial contribution motion where a settlement has been reached, but I understand the U.S. Trustee might have some issues. We're going to put that to the -- to the back.

THE COURT: If I understand the terms of the settlement, you'd better put it to the front.

MR. KIESELSTEIN: Okay.

THE COURT: Because one of my questions is whether it amounts to a plan modification, so why don't you proceed with that one first?

MR. KIESELSTEIN: Understood, Your Honor.

I'd say -- make a couple of points about that. One, we were talking about $450,000 out of a $40 million cash pool for the general unsecured creditors. In our mind, that would amount to an immaterial modification of the plan under lots of precedent.

I would also point out that two-thirds in dollar amount of those who would be impacted by that, that is RSA parties essentially, have already agreed to the slight

reduction in the cash pool recovery.

So, you know, we view there being no need -- and, in fact, it would be highly impractical to require re-solicitation of public debtholders for some number of days or weeks to bring this settlement home.

Remember, the Class 4A creditors voted 99-plus percent in favor of this plan, which provided $40 million plus the litigation trust claims. And we think it extraordinarily unlikely with two-thirds of dollar amount on the record is supporting this settlement that we would have some sort of numericity problem because people who had not voted, or abstained on 40, would rise up at 39.5.

THE COURT: But the application itself was made at a time when, if it were granted, Mercuria would have paid it so that any of the unsecured creditors who voted on the plan would've had no idea that they were being asked to pay any of it.

Now I'm being asked on the afternoon of confirmation with no notice to all of those people to approve their payment of an administrative expense, or a portion of an administrative expense, in front of Oaktree. Whether you think the dollars are big or not, all of those people had the right to know about it and to object if they thought it didn't meet the standards under Section 503, didn't they? And wouldn't I be depriving them of that?

They would have no idea that this is coming up before me today.

MR. KIESELSTEIN: Yeah. I'm going to let others speak -- people to the settlement speak to that particular issue. We obviously were trying to facilitate a settlement. I think it's obvious that the -- I won't say the lion's share but a substantial portion of the benefit from the whole Oaktree/Hartree impromptu auction with the -- with the Mercuria folks benefited. We saw the numbers rise from 20 to 30 to 40 million dollars in the course of an afternoon, Your Honor, and we think it's the -- it's the right and fair result.

And I think critical mass of those who've been active and engaged in the case, who've appeared, who've participated, who voted are onboard for this modification. I think it would be a -- sort of a Pyrrhic exercise to go through the expense and the delay and the cost. I think it would eat up the amount of money we're talking about and then some.

I understand that it's a slight diminution in the overall recovery for that -- for that class of creditors. Again, the bulk of the dollars are already onboard for that modification. But I'd yield the podium to any of the people who are more actively at the settlement table, if that's all right with Your Honor.

MR. QURESHI: Good afternoon, Your Honor. For the record, Abid Qureshi, Akin, Gump, Strauss, Hauer & Feld on behalf of the official committee.

Your Honor, with respect to the Oaktree substantial contribution claim, while Your Honor is, of course, correct that with this modification, people who voted on the plan would, of course, not have had information concerning the settlement at their disposal at the time of the vote.

I think the right lens to view this through is whether, in fact, this settlement constitutes a material modification to the plan, such that re-solicitation is appropriate.

And, in turn, what the caselaw there suggests is that the question to be asked is whether this modification is such that it might be likely to alter the vote of people who --

THE COURT: Why is that the only question? You've made a settlement. Don't I have to decide the reasonableness of that settlement?

MR. QURESHI: Certainly Your Honor can --

THE COURT: Don't other unsecured creditors have a right to weigh in as to whether they think it's reasonable or not?

MR. QURESHI: Well, in this case, Your Honor,

given the lack of materiality of the settlement, I mean, it is -- the $450,000 that has been agreed to as part of this settlement constitutes, just with respect to the cash distribution to unsecured creditors, a hair over 1 percent. When one takes into account some amount of recoveries that certainly unsecured creditors expect there will be on account of the litigation claims, it's going to be much less than that, as Mr. Kieselstein pointed out. Resoliciting would, I think, cost materially more than that.

So given that it is not a material modification that --

THE COURT: Even if I don't resolicit, wouldn't notice of the proposed settlement give them opportunity to object to it, be what due process would ordinarily require here?

MR. QURESHI: If this were, I suppose, Your Honor, outside the context of plan confirmation, certainly it could be teed up in that fashion, but I do think that in connection with confirmation of a plan as part of everything else with the plan. I do think that it's appropriate given the immateriality of the -- of the amount.

THE COURT: What's the basis on which you decided that a $450,000 payment on behalf of the unsecureds was appropriate here?

MR. QURESHI: A number of things went into that

decision on behalf of the committee, Your Honor. Number one is that does represent in total amount going to Oaktree a reduction from the fees that, in fact, they incurred.

Oaktree's counsel provided invoices to the committee as well as to the U.S. Trustee in advance of the committee supporting this settlement. And it represents, I think -- and Oaktree's counsel can correct me -- but I think approximately one-third reduction in the fees that they actually incurred. So that was one basis.

And the second, Your Honor, was given the overall contribution that the unsecured creditors believe that Oaktree made to this case, the very substantial way in which recoveries have been improved to unsecured creditors, we think there's grave data as to whether this estate would even have been administratively solvent absent Oaktree's role.

THE COURT: Do you know of any other instance in which somebody who bids and helps drive up the bid has been given substantial contribution claim like this?

MR. QURESHI: I don't have any other specific examples, but --

THE COURT: What would -- if I do that here, what would stop every bidder in every auction ever in front of me from asking for its fees to be paid?

MR. QURESHI: Fair enough, Your Honor. I think

each case needs to be addressed on the facts and circumstances of that case. This was not typical of what I might call an ordinary 363 auction process where there is an organized sale process that takes place over 120 days, or whatever the time period is. A whole bunch of people show up, and there is an auction.

This was -- this case was a morass of litigation from the day it commenced, and there was an extremely short period of time, extremely short window where there was a possibility of even getting to this kind of a resolution. I think Oaktree was taking on a lot of risk by stepping into that mess. And had they not stepped into that mess, it is a case that likely would not even have been administratively solvent.

So I think all of those circumstances, Your Honor, distinguish it from a more ordinary course 363 auction where people are participating. And in that circumstance, I think seeking a substantial contribution claim for participating in that type of auction is materially different from what occurred here.

THE COURT: All right.

MR. QURESHI: Your Honor, Mr. Somerstein was just pointing out to me that it is common in bid procedures orders itself to specify that a substantial contribution claim will not be allowed as a result of participating in an

action process. But again, here, given the fast-moving nature of the case and the substantial risk that things could've turned out very differently, we think it's appropriate.

Unless Your Honor has questions, I'll turn it over to Oaktree.

THE COURT: All right. I think I understand your position. I'll hear from anybody else who wants to be heard on this.

MR. DENMAN: Thank you, Your Honor. Harrison Denman from White & Case for Oaktree/Hartree.

I'd just like to respond to two of those arguments. I agree with everything that's been said.

First, on the notice point --

THE COURT: Presumably, you don't agree with some of the things I've said.

MR. DENMAN: Well, I respectfully disagree.

The first is with respect to notice, Your Honor, this idea that this is coming in at the last minute with respect to unsecured creditors.

I understand it may not be visible to Your Honor, but these discussions that culminated in this economic agreement among all the constituencies did not come together overnight. There has been discussion among the unsecured creditors, Mercuria, and Oaktree for months, really. And I

alluded to it the last time I was before you at the disclosure statement hearing, and that's continued before and after we filed our application. I've had dialogue directly with individual noteholders, with the committee advisors, with trade creditors. It's been a pretty robust discussion that has universal endorsement. So this is not something that -- from the party and interest side has come up overnight.

The second --

THE COURT: And at one point in these cases, you said that Oaktree was considering suing the parties to the plan support agreement that it had signed. What happened to that? Did you drop that?

MR. DENMAN: We did, Your Honor. There was a --

THE COURT: Did you drop that as part of this deal, or did you drop that separately?

MR. DENMAN: We separately have communicated that we would not be continuing to pursue that. We had a dispute -- largely because it became moot. We had a dispute at the time with respect to whether or not the RSA was properly terminated. Given the passage of time and how the milestones would've played out anyway, it became purely academic, and there was no reason to even further discuss it.

But the second point I wanted to discuss -- so in

addition to that notice issue --

THE COURT: How can I judge whether this is a reasonable settlement when I don't even have any backup for your fees? At least some of the things you sought to do -- for example, at the hearing in front of me, you may have made a topping bid, but you all -- your counsel also spent a significant amount of time trying to get approval of terms of Debtor in Possession financing agreement that essentially would have, right out of the bat, foreclosed any further competition. Whatever time was spent on that, how did that substantially benefit the estate?

MR. DENMAN: Well, Your Honor, I don't -- first, I don't think that our DIP, to the extent approved, would've foreclosed for the participation the Debtor --

THE COURT: Sure it did. It was conditioned on approval of your RSA. When I said that I wouldn't have that condition, you pulled out of the process.

MR. DENMAN: I understand. The --

THE COURT: You were not willing to go forward unless you were locked in. So whatever time you spent trying to get that, how on Earth was that for the benefit of the estate?

MR. DENMAN: Well, Your Honor, the honor -- RSA that we were connected to had the usual fiduciary out. In the same way that Mercuria has proposed stalking horse had a

breakup fee, right. I think that each side, as they pursued, was trying to present the Debtors with the best deal possible.

I think that -- you know, there really is no doubt that the DIP in conjunction with the RSA and the restructuring discussions that Oaktree commenced created value for the estates here, created value for unsecured creditors.

THE COURT: Let me ask you. Oaktree's been involved in a lot of bankruptcy cases. Have you ever gone into a substantial contribution application for being a bidder?

MR. DENMAN: Yeah, Your Honor, I want to -- I want to just -- that was my second point, and I'm glad you brought it up again.

I want to just go back to this idea of us being another bidder, another topping bidder. I don't know that's an accurate characterization of our role here.

THE COURT: Well, before you tell me that, answer my question. Have you ever gotten a substantial contribution award for being a bidder?

MR. DENMAN: I personally have not done this before.

THE COURT: Okay. Go ahead.

MR. DENMAN: So, you know, I think that there is a

fundamental difference between a party that comes in under Court-approved bid procedures, which often has the language that was discussed, and makes incremental bids according to parameters that have already been blessed, the consequences of which are naturally confined to certain aspects of these cases as compared with what we did. Right?

We were an alternative plan sponsor. We came in, and we didn't just compete on the price of assets. We didn't compete according to bid procedures. We presented a completely different transaction framework, one that upended the potential recoveries of the stakeholders in these cases.

Previously, before we arrived, you know, had we waited for Court approval of the bid procedures and then proceeded in that manner, and having -- had we just been another topping bidder, it's unclear whether our incremental value would really have reverberated in the same way to these estates.

You know, as a result of the -- converting this into a plan process and sponsoring a plan, Mercuria's intern proposal had to include better provisions in the same plan context. The result was subsidiary creditors getting unimpaired and paid in full whereas previously they were sharing pro rata with a portion of a $20 million cash distribution.

THE COURT: Before you made your proposal, did you

ask the parties if they would support a substantial contribution application to pay your fees?

MR. DENMAN: We did, Your Honor. We had extensive dialogue.

THE COURT: Who did you have conversations with?

MR. DENMAN: I had plenty of conversations with committee counsel. I had conversations with counsels to the Debtors. I had conversations with individual noteholders, and I believe that's it.

THE COURT: How much of the fees that you're seeking predated the time when you had those conversations?

MR. DENMAN: About $900,000 plus. In other words, if the total application was for 1.15, or approximately, the amount that was incurred after the date that Oaktree walked away, which was at the DIP hearing with Your Honor, was relatively small. It was, I think, in the vicinity of 150 grand.

THE COURT: Okay. And how much of the total that you sought was incurred before you first spoke to the committee about making another bid?

MR. DENMAN: About making what, Your Honor?

THE COURT: Making a bid.

MR. DENMAN: Zero. I don't think we had conversations with the committee at the time that we were stepping forward to start the process. We -- I could be

corrected on that. It's possible it happened without my involvement.

THE COURT: So you incurred over $1 billion in a one-week period that was --

MR. DENMAN: No, Your Honor.

THE COURT: -- (indiscernible) here?

MR. DENMAN: I think, as I clarified, we incurred approximately 950 grand or so within about a two-and-a-half-week period. I recognize it is a lot of money, frankly. But I also hope Your Honor appreciates just the sheer volume of work that needed to happen to be able to submit a competing plan proposal and negotiate and execute final documentation on that timetable.

It was -- it was intentionally a tight timetable. I need to make sure Your Honor appreciates that. It wasn't an accident that we needed to move the world in two weeks, in two and a half weeks, to try and get that done. And that was by design to try and make that as difficult as possible.

THE COURT: I often have -- well, I don't -- but I -- it's certainly not infrequent that I have cases where somebody has a proposed stalking-horse bid that then is withdrawn because somebody betters it. Prior to the time when the stalking-horse bid is approved, the stalking-horse bid usually has an expense reimburse provision, but the usual rule is if I haven't approved it, they don't get their

expenses. And I think under your proposal, if you talked to Mercuria, they wouldn't have gotten their expenses. So if you were topped before I approved any deal, why should I give you your expenses?

MR. DENMAN: Your Honor, I just think this is fundamentally outside the paradigm of a topping bid. I think this is about a generation and creation of value for the estates, and I think that's reflected in the -- in the enforcement that you see from the constituencies here. If this was inappropriate, I think I would expect the parties in interest that are going to be bearing the economic responsibility for this to object or have a problem with it. And the fact they don't, and I think that's reflected in the fact that the agreed-upon --

THE COURT: One of them does. It's agreed to pay about a quarter of what you asked for, and to the extent it's their money, they can do what they want, Mercuria. A lot of the other parties in interest here, some of them have supported you, but many of them don't even know about this. But that's part of my problem. Many of them have no idea they're being asked to pay for this.

MR. DENMAN: Your Honor, we've -- knowing that the largest trade creditor of the official committee and two-thirds of the noteholders are onboard, we think that accounts for substantially all the creditors who would be

monetarily sensitive to this, economically incentivized to object. So, you know, I suppose it's possible there are some noteholders out there who we haven't heard from them; they haven't heard or shown any interest in these cases to date. So I -- to the extent they were involved in any of the discussions involving these cases, they have been brought up to speed months ago with respect to this and the possibility of this.

THE COURT: Okay. Does the United States Trustee wish to be heard?

MR. KIESELSTEIN: Could I make just two brief points, Your Honor?

THE COURT: Sure.

MR. KIESELSTEIN: I neglected to -- thank you.

Your Honor, I do want to emphasize the small window that was available for someone to come in while Mercuria was largely unprotected. We see that dynamic before.

I also want to emphasize -- and we talked about this vis-à-vis Mercuria -- the limited amounts of diligence that were available at this company, the cloud that was hanging over this company, and -- frankly -- the boldness that it took for someone to step in and devote as much time and energy as was devoted here in a very compressed timeframe. I know the number is a large number, but the

intensity of the work that went on was really hard to -- hard to describe. It was a short window, and they shot through it. And they obviously did a tremendous amount of value enhancement.

I think that's far different from bid procedures of 45- or 60-day marketing period where everybody sort of knows the ground rules. I mean, we were -- we were thrilled to have Oaktree appear on the scene. We worked as hard as we could to accommodate their desires and needs so they could put forward the type of proposal that they put forward.

The other thing I would note, Your Honor, is I think we've said publicly we think hundreds of millions of dollars were diverted from this company prepetition. The litigation trust will be well-funded, well-staffed, and we'll pursue these claims. I'd be -- we haven't projected a value because it's a matter of enforcement and collectability.

But I think at the end of the day, this -- in essence -- $150,000 modification for some group of the unsecureds is going to fall far below the minimum threshold that most courts apply when we think about material adverse modifications to a plan.

And so I think that's a pretty safe prediction, projection to make here. I think it would be a shame to

lose the benefit of this settlement, this arrangement, where all the real parties who've participated feel strongly that it's been merited. It's been earned.

Thank you, Your Honor.

MR. MASUMOTO: Good afternoon, Your Honor. Brian Masumoto for the Office of United States Trustee.

Your Honor, I believe you've, probably more effectively than I could've, raised the issues that we had outstanding. We were made aware of the settlement, but we nevertheless did not feel comfortable in not raising our concerns to the Court. Your Honor raised the issues regarding whether or not the substantial contribution issue was satisfactorily established on behalf of Oaktree.

I would like to indicate that -- I noted that in the committee's statement in support of the substantial contribution, they indicated that on December 10th, the Debtors and the committee received an unsolicited proposal from Oaktree/Hartree, which suggests, again, that there were not any prior conversations regarding substantial contributions that may have -- may have instigated or may have promoted the attempt by Oaktree to participate.

They certainly were proposing a DIP proposal on their own merits, and one would assume that financially benefited them. The fact that it also benefited the unsecured creditors was an incidental benefit from our point

and wasn't -- was not necessarily the sole driving factor in their -- in their competitive proposal.

In addition, from our standpoint, there are several other aspects: the issue as to whether or not they satisfactorily established their substantial contribution. We do also oppose the process where, for example, the time records were not attached to their application.

And again, as noted by Your Honor, although upon request they did provide invoices to our office, I -- the Debtors and, I believe, the committee, and Mercuria, that was never provided to the Court. And any 503(b)-substantial application -- substantial contribution application is required under the code under 503 to be upon notice and hearing. And without those time records made publicly available for others to evaluate as to whether or not the criteria of substantial contribution had been achieved or not is something that we believe should not be perpetuated in this case.

I mean, we believe that those time records should've been made available certainly to the public and most definitely to the Court. As Your Honor pointed out, the Court's been denied the opportunity to evaluate the reasonableness of the fees.

I believe that there was some response that indicated that the U.S. Trustee got something slightly

different than what Mercuria did. And upon conversation with Mercuria counsel, what invoices were -- that was provided did not have dollar figures attached to the individual time records, the extension amounts. That's a -- that's a detail that Mercuria did request from late in case, and I believe that -- and that was provided. From our standpoint, that wasn't really relevant. I mean, for the overall -- for the overall perspective that we believe that a complete fee application with details should be provided publicly and to the Court --

THE COURT: Did you get fee backup information yourself?

MR. MASUMOTO: We received invoices which have time records and the number of hours. The invoices indicated that there were $1,200 apparently spent by a significant number of people. I think there were 15 partners, maybe 15 associates, and other timekeepers involved.

I can tell you from a technical standpoint, as far as the Southern District guidelines are concerned, there was a great deal of lumping. I believe there were just about 300 --

THE COURT: You mentioned a date a few minutes ago. You said when the committee said that it had received an unsolicited offer from Oaktree, was it December 10th?

MR. MASUMOTO: December 10th, and I believe the hearing was on the 13th.

THE COURT: Did any of those time entries cover work done before December 10th?

MR. MASUMOTO: I believe there were time entries beginning on November 29th. I haven't totaled up the amounts. So from November 29th on, their invoices include records -- time records from various individuals, again, without the actual dollar amount.

So, once again, from a process standpoint the fee application issue is something that our office, I guess, quite strongly opposes in terms of what the current procedure is recommending.

I -- going back to the issue of the circumstances of the -- of the competitive bid, I do believe that the -- that White & Case -- that Oaktree and Hartree should also disclose to the Court the circumstances of the process. Their entitlement to substantial contribution under 503(b) is premised upon their status as a creditor. And in this case, the creditor's status arose post-petition.

I believe -- I'm not quite sure. We did solicit information and received that information from counsel, and if Your Honor believes that it's relevant, I think they can provide that information. But I believe there's no dispute that they acquired the claim just prior to the hearing on

the DIP financing.

Interestingly enough, I mean, we looked at -- in looking at the circumstances, one of the initial questions that arose is whether or not a 2019 statement would've been required. A 2019 requires essentially the disclosure of disposable economic interest. And as Your Honor may be aware, part of the change that occurred in that -- in bankruptcy rule was part of the idea as to the intent and motivations of party, particularly those who require interest post-petition. In fact, one of the exemptions from disclosure of the amounts is as to a party who may have acquired their interest a year prior to the petition.

So we believe that in addition to -- again, addressing the issues that Your Honor raised regarding whether or not they truly provided a substantial contribution as opposed to advancing a bid in their own interest, they should provide additional information regarding their acquisition and disposition of the credit -- of their claims, which allow them to achieve the creditor status.

THE COURT: Are you able to tell at all from the time entries you have how much effort Oaktree put into this before it first contacted the committee or the Debtors?

MR. MASUMOTO: Not entirely, Your Honor. I mean, again, the invoices indicated the date and the hours

provided but not the dollar extension as to the amounts achieved. But I believe that information is available, since I believe Mercuria did request that information and has that information. So I can't quantify the amount after they communicate it with the committee.

We did -- I -- in fact, we had a conversation with the committee counsel just prior to the hearing addressing the issue. One thing that did surprise us with respect to the settlement was the committee's participation in this settlement. From our perspective, the point that Your Honor made was that if, in fact, the substantial contribution was approved by Your Honor, it would technically be treated as an admin expense to which Mercuria would have to provide the funds for, I guess, under their commitment.

The committee, from the standpoint -- once again, Oaktree/Hartree proposed their DIP financing for their own, presumably, financial benefit. It had an incidental benefit to the unsecured creditors committee, which upon approval of the Mercuria DIP and the withdrawal of Oaktree was locked in. The $40 million was already guaranteed and provided for under that approval by the Court. And so it puzzled us a little that the committee was willing to participate in the settlement.

I can understand the gratitude they may have had going from $15 million cash to $40 million plus

participation in the litigation trust, but, again, from our standpoint, it would've been locked in at the time of the approval of the DIP. And as Your Honor indicated, any approval would essentially be a burden and fall upon Mercuria to cover as opposed to the committee.

So we did have some questions as to exactly why -- I mean, it would've been more understandable had a different scenario arose, had the committee been actively soliciting alternatives to the DIP and sort of prevailed upon Oaktree. Again, I'm not sure that would give rise to a legal obligation but certainly would -- could give rise to an understanding that they feel a moral obligation to support the efforts of Oaktree/Hartree.

If you have any other questions, Your Honor, I'd be happy to attempt to answer them. Otherwise, nothing further. Thank you.

THE COURT: No, I don't. Thanks.

MR. MASUMOTO: Thank you.

THE COURT: All right. Does Mercuria wish to be heard?

MR. FRIEDMAN: If I may, Your Honor.

THE COURT: Yep.

MR. FRIEDMAN: Good afternoon. Ronald Friedman from Silverman Acampora, Counsel to Mercuria U.S. Holdings with respect to this issue, as you know from our pleading,

Your Honor.

I would just note, Your Honor, at the outset that the last point that Mr. Kieselstein just made is clearly on the mark from Mercuria's perspective for a few factors. One, at the end of the day, I believe that out of the 450 that would come from that litigation trust, over -- approximately 350,000 of that 450 is coming directly out of the divide benefit to the noteholders in that fund. So Mr. Kieselstein's dollar amount of between $100 and $150,000 spread amongst the class is really, I think, the analysis that we should looking at. We clearly believe it's not material.

Secondarily, Your Honor, we believe that in the context of confirmation, you have the sincere authority to proceed with this.

But most importantly, Your Honor -- and I heard your question relative to the precedential value of this and is every other bidder in every other 363 auction kind of come storming in here. And I think the answer is a resounding no. And the reason why it's a resounding no, Your Honor, is there's a courtroom full of folks here, and they'd be hard-pressed to tell you a case that they have an all fours with what's transpired here, given all the facts and circumstances and time --

THE COURT: Do you know how often I hear that? I

hear that about --

MR. FRIEDMAN: I'm sure you hear it all the time, Your Honor.

THE COURT: Every single --

MR. FRIEDMAN: Every single big case.

THE COURT: -- case that I have ever had in front of me, people say, oh, there's never been one like this.

MR. FRIEDMAN: Well, Your Honor, on -- with these assets and this timeframe, I think that we could take that.

But one of the things we looked at, Your Honor, from Mercuria's perspective is -- and I heard Mr. Masumoto, and certainly he and I had the chance to confer on this -- is we asked the folks in White & Case for the invoices because, of course, we have to follow the process. And when we did our analysis of those invoices, we broke it down into categories of time, right, to one of the points you were razing.

And in essence, the overall recovery that White & Case would be reciting under this settlement is pretty close to spot on to what our analysis was after taking our consideration for the lumping entries, and the time entries after the action, and the time entries from before when they were just getting generic case background, and looking at the time entry relative to what was spent on the DIP and RSA, etc.

And our calculation comes in right spot dag in the middle of where they would end up on this overall recovery where they're receiving roughly 750 -- they're receiving $750,000. Our analysis shows that if everybody did a fulsome review of all of those records under a settlement construct that, you know, that would be a fair and reasonable award.

And given all the facts and circumstances here, including the fact that the DIP is fully drawn, that we don't believe there would be any benefit in a practical sense to doing any resolicitation, having any costs attendant delay, deferring there was closing on the restructuring transaction, assuming confirmation was achieved today.

To do that so that potentially $100,000 of distribution to creditors could be accomplished when there's hundreds of million dollars of avoidance claims in that litigation trust, we just don't believe is necessary, Your Honor.

One other point I just wanted to make in the review of the timesheets, we didn't just get the first rounds from White & Case. They provided us some time records. We didn't think they were detailed enough. We asked for that to come in another format. We received the same format, I believe, that both Kirkland & Ellis, as well

as the U.S. Trustee's Office received. And we asked for one version subsequent to that, Your Honor, because we wanted to do a fee application type review, as is customary in a bankruptcy case, where we could see that Mr. Smith spent one hour and that it had a dollar value right next to it. And previously, when it had come to us, it was in a different format.

And after having done that entire exhaustive review, Your Honor, and certainly having spoken with the client and conferred with all the parties, and we spoke with counsel to the Committee, and obviously we engaged with White & Case, and we certainly spoke to the folks from Kirkland & Ellis, we believe that the settlement that we've achieved is not only necessary and appropriate, Your Honor, but we believe that it is actually a fair result for all the parties in interest in here. And I wanted you to be aware that we had done that exhaustive review.

THE COURT: Okay. Anything else?

MR. DENMAN: Your Honor, I just wanted to make one point of clarity, given the back and forth. First, Your Honor had mentioned the moment in time at which we had first started talking to the Debtors regarding the bid. There would be no time entries that -- you know, that predated that moment of talking. We were speaking with the Debtors at the very beginning, okay?

And you know, the second point I would make is that, Your Honor, to the extent the notice to the unsecured creditors' point is a problem for you, I suppose there would be a way to this on some form of abbreviated notice or something like that to -- I suspect, the interested parties are exhaustively already involved here. But to the extent that was necessary, I'm sure an arrangement could be made, to the extent that helps.

And I think that's it. Thank you.

THE COURT: Anything else? All right. On the Oaktree application for a substantial contribution, I have a proposed settlement, a portion of which would be paid by Mercuria. And quite frankly, if Mecuria wants to pay money, that's fine. It's sophisticated, can make its own decisions. I have no desire or intent to interfere with the portion of the settlement that would be paid directly by Mercuria.

I also have before me a proposal that $450,000 would be paid to Oaktree towards its attorney's fees and would be paid out of monies that otherwise would go to unsecured creditors. This is presented to me, I suppose, as both a plan modification and has a proposed settlement.

Now, some of the parties that would be affected by that are represented before me today. I'm told that the noteholders that have actually endorsed this deal represents

some large percentage. Somebody used the number of approximately $350,000 out of the $450,000 that they would be paying. And quite frankly, if they want to pay that, they can go ahead.

But I have a lot of problems with the proposed settlement on behalf of the other noteholders, who have neither been told about this and who, in effect, are being told that they're settling a claim that was not even made against them.

The application that was made was for the allowance of an administrative expense claim on the grounds that Oaktree had made a substantial contribution. Under the terms of the plan, administrative expense claims are to be paid by Mercuria, not by the unsecured creditors.

Under the terms of the plan, a fixed pool was to be set aside for the unsecured creditors, consisting of $40 million plus various litigation claims. And there was nothing about the Oaktree application, therefore, that would implicate the unsecured creditors or even make them a party. A party in the sense that they could be heard, sure, but not a party in the sense that money was being sought from them.

They asked me today to approve this settlement with no notice to those other unsecured creditors. It is something I'm just not willing to do, particularly since one of the things that I am required to consider in deciding

whether to approve a settlement is whether they think it's a reasonable compromise based on the merits of the issue. Other unsecured creditors have the right to raise objections to this. If they had done so, I would have sustained them.

The parties who want to make payments to Oaktree are free to do so. But there are a number of problems with the merits of the application to the extent it asserts a substantial contribution claim.

Section 503 of the Bankruptcy Code says that a creditor may receive a substantial contribution claim, or a claim for making a substantial contribution. Oaktree contends that it was a creditor here because it acquired a claim. But there is absolutely zero, zero connection between that creditor's status and the activities for which it seeks compensation.

It is not seeking a substantial contribution claim as a creditor. It is seeking a substantial contribution claim as a bidder. And I am not going to treat the purchase of a creditor claim as though that irrelevant act somehow brings Section 503(b)(3) into play.

I recognize that there is case law to the effect that Section 503(b) says that there are various administrative expenses that may be allowed, including -- and then there's a long list of other items. I recognize that under the Bankruptcy Code, the word "including" is

defined as being not exclusive, and therefore, not excluding other things.

But the usual rule in bankruptcy is that administrative expenses are the expenses incurred by the trustee or the debtor itself, or that are incurred directly in the preservation that had administration of the assets of the estate.

Paying non-debtors is an exception to that rule. And there are exceptions in Section 503(b), but they don't use the word "including", and they are limited to the circumstances that are listed there, such as claims by a creditor for its substantial contribution in a case.

I think that the cases that have held that those circumstances are -- those items are exclusive as to when substantial contribution can be awarded have the better of the argument.

But I don't need to make a final decision on that because whether I think the argument is foreclosed or not, it is under the case law in this Circuit that paying the expenses of another party is supposed to be the exception rather than the rule. It is supposed to be a narrow exception, and it's supposed to be applied only where, usually at least, the party who seeks compensation has done something that an estate fiduciary otherwise would have done. That is not what I have here.

I have a party who for its own interest made a competing proposal. I do not mean in any way to denigrate the importance of that proposal. I myself said that I was happy that they participated. It obviously did have benefits in the way that it affected the competing proposal that Mercuria then made.

But that is exactly what happens when I have competing debtor in possession financing proposals, when I have competing plan proposals, when I have competing auction sale proposals, when I have practically any kind of competing proposal that is made in the course of the case.

I cannot see how awarding this claim would do anything other than encourage everybody who ever makes a competing proposal to demand a substantial contribution claim proportionate to whatever value their competing bid produced by somebody else.

Oaktree did not act as an estate representative. It was quite clear in the proceedings in front of me that it was pursuing its own interest. It was doing its darndest, in fact, to lock down the deal in its own -- to its own benefit, and to foreclose further discussion. And oddly enough, it was fighting to prevent exactly what it now says was the benefit that entitles it to compensation, which is an odd situation.

I think that the better rule is that people who

for their own economic interest pursue certain activities in a bankruptcy case have to bear their own expenses. That's true whether they're offering competing debtor in possession financing proposals, or that they're offering competing plan financing proposals, or that they're offering a competing purchase price in an auction or not an auction. I just think that that's the correct rule.

I don't believe anybody has cited to me any authority under which -- under circumstances like these, a court has awarded a substantial contribution claim. And I think under that context, I will not approve the settlement insofar as it affects people who haven't even been told about it. I just don't think it's reasonable. They haven't been given a chance to object. And to the extent that I'm being asked to do it without that right to object, I won't do it. I will, on their behalf, make the objection and sustain it.

So, if you want Mercuria to make your payment that it's agreed to make, that's fine. If the other noteholders who are endorsing this deal want to nevertheless make the shares of that payment out of their own recoveries that they otherwise would have made, that's no skin off my nose. They're sophisticated people. They can do that if they want. But to the extent that you want payment from those other people, I won't approve it.

So, what do you want to do?

MR. KIESELSTEIN: I'm sure the parties will want to confer, Your Honor --

THE COURT: Okay.

MR. KIESELSTEIN: -- in light of your comments. So, I would suggest we move off that agenda item --

THE COURT: Well, let's --

MR. KIESELSTEIN: -- if that's all right.

THE COURT: -- see if they talk for a few minutes and take a short break anyway before we move on to the other items.

MR. KIESELSTEIN: Sure. Of course.

THE COURT: Okay.

(Recess)

THE COURT: Please be seated. Okay.

MR. DENMAN: Your Honor, thanks for the recess. I don't think anything constructive could really occur on this kind of a timetable. We're certainly not going to be able to reach and discuss and coordinate with the individual noteholders in that kind of hallway discussion forum.

So, Your Honor has ruled what Your Honor ruled. We've heard you with respect to the Mercuria deal. From our perspective there's still an advised proposed order by which Mercuria and I settled and agreed to a $300 million payment. Your Honor indicated that you are not inclined to touch

that.

I suspect, given the substance of Your Honor's order, you may hear from them. But that's where we are.

MR. QURESHI: Thank you, Your Honor. At this point, Your Honor, having conferred with the parties and certainly with the folks at White & Case, having heard Your Honor's ruling, we think that the application should be denied and let the case proceed to its confirmation.

THE COURT: Why should I deny the approval of the settlement as it relates to you? You yourself stood here and told me why I should approve it.

MR. QURESHI: In order to have complete fidelity on as many issues as possible, Your Honor, yes, I did. But given all the facts and circumstances, Your Honor, and certainly the determination Your Honor made relative to the merits of the application, which are certainly embodied in the objection that we filed on our client's behalf, we sought to resolve it. We had proposed language that would resolve it. Unfortunately, it doesn't get resolved unless everything else gets resolved. And so...

THE COURT: You made a deal with them, right, that you would pay that amount?

MR. QURESHI: We made a deal with them, Your Honor, conditioned upon everything else getting done in that way, that's correct, in order to move forward towards

confirmation without having any delay or litigation over a 503(b) application that's been denied.

THE COURT: Well, I only learned that there was a deal, let alone what its terms were, shortly before I came out on the bench because I was occupied by other matters earlier today. So, I don't have any idea whether you have a binding obligation with them or not, independent of whether I approved it or not. So, what's Oaktree's position on that?

MR. DENMAN: To be clear, Your Honor, we think we have a binding agreement with them. They agreed to provide us $300 million -- $300,000 --

(Laughter in the Courtroom)

MR. DENMAN: I take that silence as acquiescence, Your Honor.

(Laughter in the Courtroom)

MR. DENMAN: And a deal is a deal. And we didn't think it would be inappropriate for somebody to strike a deal coming to court and then walk away from it after hearing the benefit of Your Honor's ruling, certainly --

THE COURT: Do you have a written settlement agreement or, no, it's just what was in the order?

MR. DENMAN: You know, Your Honor, it was conversations that occurred over the course of the weekend that culminated in a revised proposed order. That's really

all we have.

THE COURT: And he's saying in effect that it was contingent on my approval of the other parts of the deal. I mean, I have approved it as to him. So, any contingency as to that part of it I've satisfied. So, is it your understanding that your deal with Mercuria was contingent on my approval of the deal as it relates to the unsecured creditors?

MR. DENMAN: No, that's not how I understood things.

THE COURT: And is that your understanding? And where does that come from?

MR. DENMAN: Your Honor, my understanding is --

THE COURT: I'm sorry, I was asking Mercuria. He's standing right next to you. Sorry.

MR. DENMAN: I saw him over your shoulder.

MR. QURESHI: Yes, Your Honor, it was part of a global resolution in order to resolve the litigation issue relative to the 503(b) application and the construct of the entire matter to move forward to its confirmation. And everything was embodied in the draft of the confirmation order that was circulated. There is no separate settlement agreement.

THE COURT: All right. Well, I'm not going to rule on that issue. It Oaktree thinks that it has an

enforceable deal with the Mercuria people, it can seek to enforce it and I'll decide the merits of that separately. I have not denied approval of that.

I have denied the request insofar as it affects unsecured creditors who weren't aware of it and who weren't even told that the application would purportedly come out of their pockets. And as to whom I, on their behalf, have decided that not only did they have a right to object, but to the extent there was an objection I would decline to approve it, perhaps sustaining the U.S. Trustee's objection in that regard.

But that still was approval of almost the entirety of the application, at least to the extent that the major noteholders were willing to live with the expenses that they had told me that they were willing to bear. So, I'll just leave that issue for now. Okay?

MR. QURESHI: Very well, Your Honor.

THE COURT: All right.

MR. QURESHI: So, that application will be included on the calendar?

THE COURT: I'll issue an order that reflects the rulings that I had made. And to the extent that there is still a dispute over whether you need to pay Oaktree or not, I don't think that's going to affect confirmation because I'm pretty sure Mercuria can afford that money.

MR. QURESHI: Thank you, Your Honor.

MR. KIESELSTEIN: Thank you, Your Honor. Marc Kieselstein again on behalf of the Debtors. We're making incredible time.

THE COURT: Now on to the easier issues.

(Laughter in the Courtroom)

MR. KIESELSTEIN: Exactly. Your Honor, there was reference to that settlement in the latest version of the confirmation order. We'll obviously strip that out and it'll be dealt with in Your Honor's separate order.

With regard to the confirmation of the plan, Your Honor, how we plan to proceed is, my partner, Mr. Winger, will go through the uncontested elements of 1129 and the other portions of the plan for which no objections have been launched. Then I would come back and do the third-party releases and exculpation issues. And then Mr. Winger would do the professional -- the committee member professional fee issue, if that's all right with Your Honor.

THE COURT: All right. As to the uncontested issues on confirmation, I know you want to offer declarations into evidence and materials to support the factual record. But I've read the plan. We don't need to -- certainly, we don't need to go over each element of Section 1129. I will just -- after the record is complete, I will ask people if there are any other objections, and

assuming there aren't, I don't think we need more detail than that.

MR. KIESELSTEIN: Excellent, Your Honor.

THE COURT: Okay.

MR. KIESELSTEIN: And I know Mr. Winger will be shortly moving those declarations into evidence.

THE COURT: Okay.

MR. WINGER: Good afternoon, Your Honor. Ben Winger, from Kirkland & Ellis, on behalf of the Debtors. I'll get right to it. We have four declarations. The declaration of Ms. Jane Sullivan at Docket Number 470; she provided the voting certification in support of the plan. A declaration of Tyler Baron at Docket Number 479; he's providing evidence in relation to the release issues, which Mr. Kieselstein will address. The declaration of Andrew Hede, Docket Number 480; he's providing the evidentiary support for some of the blocking and tackling in 1129, some of the standard provisions that we will address, if Your Honor has any questions. And then finally, the declaration of Mr. Zui Jamal at Docket Number 481; he's addressed certain valuation issues.

They're all here in the courtroom today, Your Honor, and can answer any questions, if there are.

THE COURT: All right. Is there anyone who objects to the admission of the four declarations into

evidence? Okay. Nobody has objected. Is there anybody who wishes to cross-examine the declarants as to the substance of their declarations? Okay. Nobody has indicated a desire to do so. I will admit the declarations.

(Declarations of Jane Sullivan, Tyler Baron, Andrew Hede and Zui Jamal Admitted Into Evidence.)

MR. WINGER: Unless Your Honor has any questions, I'll cede the podium back to Mr. Kieselstein.

THE COURT: Apart from the third-party release issues and exculpation issues, and apart from the rights of committee members to ask for payments of their expenses, are there any other objections to confirmation?

MR. WINGER: The short answer is no, Your Honor.

THE COURT: Okay. I wanted to just make sure that somebody didn't have one that we had overlooked. But I don't see anybody objecting, and so I will take that as a know that there are no other objections.

MR. WINGER: Thank you, Your Honor.

THE COURT: Okay. Mr. Kieselstein?

MR. KIESELSTEIN: I didn't expect Mr. Winger to be quite that quick.

(Laughter in the Courtroom)

MR. KIESELSTEIN: Your Honor, Marc Kieselstein again, on behalf of the Debtors. Your Honor, we do have a brief deck on the third-party release exculpation issues.

May I approach?

THE COURT: Yes, but I have to warn you, I don't really want a PowerPoint presentation. I more prefer to ask questions and get answers.

MR. KIESELSTEIN: Okay, then let's dispense with that, Your Honor.

THE COURT: Okay.

MR. KIESELSTEIN: And don't look at it too harshly on our final fee application.

(Laughter in the Courtroom)

MR. KIESELSTEIN: Your Honor, we stand before the Court today, Your Honor, with a highly consensual plan with widespread support, which no creditor or interest holder has lodged an objection, where all the voting classes have delivered a resounding mandate in favor of confirmation.

This is a result that epitomizes Chapter 11 and what it's intended to do, which is to take a distressed company that offers a product or a service at the marketplace values --

THE COURT: What percentage of the unsecured creditors have either voted in favor of the plan or, even if they voted against it, checked the box in favor of granting the releases that you desire?

MR. KIESELSTEIN: Ninety-nine percent of those who voted. And remember, only the TopCo unsecureds voted

because the other 74 Debtors were unimpaired. We did have, I think, around 15 opt-ins, which gives me -- you know, restores my faith in humanity somewhat. So, some people read it and decided that they would opt-in to the release.

There were obviously a number of people who didn't vote, as is always the case. We have retail debtholders here and retail equity holders as well. But support for the plan, which Your Honor said was tantamount to support for the releases -- a vote for the plan was a vote for the releases, third-party and otherwise -- was pretty overwhelming, 99 percent in the Class 4A, and over 75 percent in the equity class.

THE COURT: So, let me ask you now -- and I want to break this down because all too often everybody talks about all of these various provisions in the plan as if to some extent, they are a form of third-party release, and I don't really think of them that way.

You do have in the plan a proposed release of the Debtors' own claims --

MR. KIESELSTEIN: Yes.

THE COURT: -- against a wide group of people, directors, officers, Mercuria, the Committee, various people, correct? And as I understand it, there are no objections to those releases.

MR. KIESELSTEIN: No objections, but I would just

caveat it, Your Honor, as to the former directors and officers --

THE COURT: Yes, that's --

MR. KIESELSTEIN: -- there's nothing. No debtor releases, no consensual --

THE COURT: Right.

MR. KIESELSTEIN: -- or non-consensual third-party releases.

THE COURT: Right. It's just been preserved through the litigation costs. And just so I can be 100 percent sure, is there anything in the Debtors' releases here that would affect the claims that have been asserted already in any pending action?

MR. KIESELSTEIN: No, not that I'm aware of, Your Honor.

THE COURT: Okay. So, if the Debtor releases its own claims, then to the extent you're worried about derivative claims, or claims people might make my virtual of injuries suffered by the Debtor, those claims are already gone?

MR. KIESELSTEIN: That's correct. That's how the Debtor release is supposed to work. So, we're then in the land of the direct, or alleged to be direct, third-party claims.

THE COURT: Okay. So, then we've got a proposed

exculpation provision. And these are often called third-party releases too, but I think of them differently. And I'll be the first one to acknowledge that the case law on just why these are separately approved is fairly thin. But they are regularly approved. And to some extent, the case law, most of the case law, focuses on the court's authority over estate fiduciaries and the qualified immunity that a fiduciary has when it's acting under the authority of a court.

I know the U.S. Trustee has objected to the extent your exculpation provisions would go beyond the fiduciaries themselves. But I actually think of the exculpation provisions a little differently. It seems to me that they are meant to indicate not only the fact that I have supervisory authority over the fiduciaries themselves, but I have supervisory authority over the transactions that occurred during the course of the bankruptcy case.

And so, when I think of some of these properly worded exculpation provisions, what I think they do is reflect the fact that if I have approved something, supervised and approved it, it ought not to be anybody's business to sue anybody over the terms of what I have already decided is appropriate in this case.

Now, that does mean that when I look at these exculpation provisions, I don't word them quite so

generously as almost every Chapter 11 plan that I receive does. And in fact, every release that I have ever seen, it's almost like a contest of draftsmanship as to how can the lawyers possibly cover everything that human imagination could reach. I think an exculpation provision is more appropriately limited to any claim based on the negotiation, execution and implementation of agreements and transactions that have been approved by the Court, except that people aren't exculpated and forgiven from their obligations to perform the terms of those transactions and agreements.

MR. KIESELSTEIN: Of course.

THE COURT: And all the other language about anything that, you know, bears an iota of similarity or a reference to that should come out. I think that's the proper scope of an exculpation provision.

And I'll hear from you, Mr. Masumoto, if you want to argue, but I think that as long as that's what its focus is, that I don't have a problem providing that to people who also aren't estate fiduciaries. And I note that at least the Seventh Circuit Court of Appeals has approved that approach. Although they called it a third-party release, it really was an exculpation, in the Airadigm case, 519 F.3d 640. Do you want to be heard on that, Mr. Masumoto?

MR. MASUMOTO: Your Honor, I'll defer to Your Honor. As Your Honor indicated, our position is pretty much

standard. We believe it's limited to fiduciaries. But as Your Honor recognized, many of your colleagues have approved broader application of it. And so, we'll defer to Your Honor's scope.

THE COURT: So, you've got releases on behalf of everybody who voted in favor of the plan; releases on behalf of the 15 people who voted against it, but who checked the box; releases of all the Debtors' claims, which includes any derivative claims; exculpation for the transactions that I approved of during the course of the bankruptcy case.

You've got releases from the indentured trustees, as I remember, through the restructuring support agreement; releases from all of noteholders who signed up to the restructuring support agreement; and releases from everybody else who was in the restructuring support agreement.

MR. KIESELSTEIN: Mm hmm.

THE COURT: What on earth is left that you're worried about?

MR. KIESELSTEIN: Well, Your Honor, first of all, a couple things. We tried very hard, having read your transcripts from Fairway and from Westinghouse to use the based upon language. We may not have completely succeeded, but we certainly were attentive to your pronouncements on this issue and try to be faithful to them. And there is any other further tweaking we need to do, of course we're happy

to do it.

With regard to who's left, let me harken back to the conversation we had about the prior motion. There are a great many people who didn't vote on the plan and didn't opt in. The question is, are the parties here -- and we haven't talked about the magnitude of the contribution, which I'm happy to do; it's laid out in great detail in Mr. Baron's declaration --

THE COURT: Why don't all those releases and exculpation's that I have just described fully compensate them for any contribution they might've made in the course of this case? Why should I go further and take away any direct claims that somebody else might have out there against these people?

MR. KIESELSTEIN: Well, the first thing I would say, because I think Metromedia says that you can, and under appropriate circumstances, should.

THE COURT: One of those appropriate circumstances is I'm supposed to be told what the claim is that I am taking away --

MR. KIESELSTEIN: Sure.

THE COURT: -- so that I can understand why it is something for which that particular claimant is already getting compensation in the case, and therefore make a determination as to why it's fair. So, what is the claim

I'm (indiscernible)?

MR. KIESELSTEIN: So, let me give you a couple of examples. Let me start with Mercuria --

THE COURT: Okay.

MR. KIESELSTEIN: -- because they are a released party along with 1:17:27 Mr. Moore, Mr. Baron and Mr. Bartoszek. We heard it in this courtroom, Your Honor. We heard a variety of theories bandied about by people with whom we've since made peace, but who represented the noteholder constituency as a whole, talking about things like liability on account of inappropriate loan to own strategies, inappropriate control over the coffers --

THE COURT: So, when the Debtor releases its claims against -- Debtors release their claims against Mercuria, the people who were parties to the actual transaction with Mercuria are included among those releasing parties. The indentured trustees have released their claims. Mercuria is going to be the new owner of the business. All the other creditors at the operating levels, including the companies where Mercuria actually did business, are being paid in full and are unimpaired. So --

MR. KIESELSTEIN: We're talking about the other creditors at the TopCo. That's who we're talking about. Which is whom the ad hoc group was comprised of.

THE COURT: And if the Debtors have released their

claims, what claim is left?

MR. KIESELSTEIN: Well, I'm not sure, Your Honor, that they've articulated all of their theories.

THE COURT: Well, that's not good enough to justify taking it away, is it?

MR. KIESELSTEIN: The quest --

THE COURT: See, you know, all too often I get this request. What Metromedia says to me is I'm only supposed to take away third-party claims if it's essential to the reorganization. And I'm only supposed to do it under rare circumstances.

What I actually hear whenever these releases are mentioned is that I should belt and suspenders things and get rid of a universe of unknown things to give people greater comfort, without any explanation or identification of what it is I'm taking away, how it is that that's fair necessarily to the people who I will be taking things away from, with an assertion that, well, there probably isn't anything of significance out there, but with absolutely no factual record, nor could there be a factual record that would allow me to really judge whether that's the case or not. And all in the theory that this is essential. Well, frankly, if there's nothing out there, then it can't be essential to the reorganization.

MR. KIESELSTEIN: I think that writes Metromedia

right out of the law books --

THE COURT: I don't think so.

MR. KIESELSTEIN: -- with respect, Your Honor.

THE COURT: I think your approach writes it out of the law books, quite frankly.

MR. KIESELSTEIN: Okay.

THE COURT: You know, submission reads as though you think that third-party releases are bonus, like a merit badge, as I said in Fairway. It's what you get for doing well. All the different criteria that the Courts of Appeals have asked me to look at, which is not just whether somebody made a contribution, but what is the claim that's being taken away, is the owner of that claim being treated fairly, is it otherwise getting compensation for that claim through the bankruptcy process? Nothing.

And one of the things that Metromedia told me to do was be extremely wary of releases that aren't tied to specific claims instead -- and then instead of just broad and general in terms, which is exactly what you're asking for.

MR. KIESELSTEIN: Well, let me speak to the claims that might be asserted against the directors and officers, the direct claims. There was an amended complaint filed during the pendency of this case around some of the past financial misconduct, or alleged past financial misconduct,

which added in current directors of the board. They didn't add in the three gentlemen who joined in May.

But they were directors of a public company that was undergoing a thorough investigation of alleged misconduct, potentially securities fraud, between the period when they joined the board and today. Could someone come in and say you disclosed too much, Mr. Baron, Mr. Moore, Mr. Bartoszek? You disclosed too little? You should have done X, you should have done Y, when conducting the investigation?

If it turns out the litigation claims don't yield enough to provide a dividend to the equity class, is someone going to come back and say --

THE COURT: Let me turn that around on you.

MR. KIESELSTEIN: Sure.

THE COURT: You've told me basically why members of the audit committee would want that release. But if there are shareholders or former shareholders who probably didn't even have the right to participate in this case who believed they were prejudiced by conduct by those people that maybe they'll say that it violated this Federal securities laws, if that claim is out there, why should I foreclose it? Why is it essential to this reorganization that I foreclose it?

MR. KIESELSTEIN: Because --

THE COURT: Why should -- if there's a claim out there, don't tell me that it's junk claim, because it is never essential to anything to get rid of a junk claim. And if there is a claim out there that's more than junk, why should I foreclose it?

MR. KIESELSTEIN: What I would say, Your Honor, is this is where you weigh the contribution and what it yields for the estate --

THE COURT: No.

MR. KIESELSTEIN: -- and the --

THE COURT: No. I reject that 100 percent. This notion -- this interpretation of Metromedia that I get it to appoint myself as the arbiter of whether somebody gets a gold star on their report card for the quality of the work that they do, and the payment for that comes at the expense of other people by releasing their third-party claims is wrong. It's 100 percent wrong. I will never approve it. I will never adopt it.

You don't get a release just because you did your work. You have to show that there's something about the particular claim that you want released that has to be barred in order to make this reorganization workable. And you have to show that it's fair for me to take that person's claim away from them in light of what they're getting this case. That's not what you're saying.

What you're saying is this was a hard case, these people did a good job, give them a bonus, not out of the pockets of the Debtors but out of the pockets of a bunch of third parties. That's not right.

MR. KIESELSTEIN: Well, I think, Your Honor, you said is it fair to take it away from the holders. And I think the only way to evaluate that question is to say, well, what did they get that would justify someone taking away this claim, which hasn't been brought yet but can easily be envisioned, which is impossible for me to value because I don't believe these gentlemen did anything wrong that would justify compensation. And if that means that's it, I lose, I don't know what to say to that because --

THE COURT: You know, directors of companies that are outside of bankruptcy face immensely difficult and trying situations all the time. They don't get a release of claims against them for doing their work in those circumstances. Why should it be different just because somebody's in bankruptcy?

MR. KIESELSTEIN: For one thing, they have indemnity obligations against solvent entities, generally speaking.

THE COURT: Right, and you -- and as I understand it, the Debtors here have assumed their indemnity obligations to the members of the audit committee.

MR. KIESELSTEIN: To those members of the audit committee, they have.

THE COURT: Well, that's who you're seeking the releases on behalf of. So, what's the difference?

MR. KIESELSTEIN: Well, I think there are other circumstances about going through a bankruptcy process that are wildly distinct from what one does in the normal course of a director. And that takes me back to the work that was done here by three gentlemen who were not officers of the company, but who were directors and devoted hundreds, thousands of hours, to both getting this company saved and to invigorating the investigation so that the litigation trust was a viable and well-funded vehicle for --

THE COURT: So, if a --

MR. KIESELSTEIN: -- recoveries to creditors and stakeholders.

THE COURT: If a former shareholder out there thinks that a member of the audit committee committed securities fraud, you're saying that because the audit committee did such stellar work during the course of these cases, I should reward them by barring that claim? Now, especially if it's a former shareholder, somebody who wasn't even a shareholder at the time the case happened?

MR. KIESELSTEIN: Well, a former shareholder would not have been around when these gentlemen joined the board.

I suppose there is a slight window in time --

THE COURT: Exactly.

MR. KIESELSTEIN: -- between May and November where someone could have turned into a former shareholder.

THE COURT: Not so slight a window in time. It's a six-month window in time.

MR. KIESELSTEIN: Understood.

THE COURT: So, they would've got no benefit from all that work. Why should they be giving up their claims?

MR. KIESELSTEIN: Your Honor --

THE COURT: You know, it's peculiar. You're asking me to give the directors something that I could not give them if they filed their own bankruptcy cases. I can't give them a discharge of securities law claims. They're not entitled to it --

MR. KIESELSTEIN: Well, and there is --

THE COURT: -- in their own bankruptcy cases.

MR. KIESELSTEIN: There is a governmental carveout, even for the third-party non-consensual releases for

THE COURT: The --

MR. KIESELSTEIN: -- regulatory and police power.

THE COURT: No, no, no, no, no. The exception from discharge for an individual is not limited to governmental claims. It's securities liabilities.

MR. KIESELSTEIN: Understood.

THE COURT: So, you're asking me to basically give them something that I couldn't even give them in their own bankruptcy cases, based on conduct that predated this case, for which I have no record indicating or allowing me to make a decision as to whether there are meritorious claims or not, for which the Debtor has provided indemnification that by itself protects the members of the Committee.

MR. KIESELSTEIN: I can't provide you, Your Honor, facts showing a meritorious claim when we don't believe there is a meritorious claim. So, that seems like a heads I win, tails you lose, kind of situation.

THE COURT: But it seems to me that what you're saying is you think they've earned it, not so much that it has to be done in order for the reorganization to proceed.

MR. KIESELSTEIN: Well, vis-à-vis Mercuria, I don't know what their position would be. If you're asking whether these three fiduciaries would go back and pull the plug on the plan, I mean, that's, I think, you know, an impossible ask. Of course, they would not do that. And if that means you never get a release because it's never essential when it comes to an individual, then to me that is basically negating Metromedia, because --

THE COURT: (indiscernible) and --

MR. KIESELSTEIN: -- how could you ever satisfy

that test, Your Honor?

THE COURT: Well, in Johns Manville there were rights of direct action against insurers so that the claims the insurers were settling with Johns Manville were really the same --

MR. KIESELSTEIN: Sure.

THE COURT: -- as to third-party claims. And so, the criteria to be applied were, well, the people whose third-party claims in that context were being barred, are they getting a fair recovery when the insurers turn over their policy proceeds to be administered by a trust?

In the ResCap case, which you have cited, Ally, the parent of ResCap was paying billions of dollars to settle claims that clearly overlapped with claims that some creditors were making against Ally and didn't want to pay twice. So, there was a direct connection between the claims that it was settling and the contributions it was making on those claims and the claims that were being barred. You have nothing like that here.

MR. KIESELSTEIN: Why would my -- why would these fiduciaries contribute something on behalf of claims that have no merit? Again, if that's the test, they have to throw a million dollars in for spurious claims, and this is really a question of whether the closure and finality is something that can be earned by fiduciaries sticking their

head in the meatgrinder in a situation like this and going above and beyond.

I don't agree with the notion that this is like the Little League team at the final luncheon or banquet, most improved backup right fielder, which was, I think, my ward back in the day. But I do think there are circumstances which distinguish one case for another and it's a sliding-scale.

You're right. We're not compensating people for taking away these claims, which I struggle to conjure up, frankly. But again, that seems like a cul-de-sac where whichever way I turn, there's some element of Metromedia that you don't think we're satisfying.

THE COURT: Yeah, right, because Metromedia says that you're only supposed to get third-party releases in rare and unusual cases.

MR. KIESELSTEIN: Right.

THE COURT: The standard you're proposing to me is part of the problem. In actual practice, at least in terms of what debtors ask for, these aren't rare and unusual. Everybody wants them in every single case.

Everybody, every debtor tells me that the case imposed extraordinary challenges for the directors, and they did such a great job that I should reward them by taking away claims that people might have against them based on

things that even predated the bankruptcy. Everybody asks for that.

MR. KIESELSTEIN: And sometimes it's true.

THE COURT: It's not true. You know what? It's a misreading of Metromedia; that's my opinion.

MR. KIESELSTEIN: So sort of irrespective, and I don't mean to argue with Your Honor, God forbid. I'm just -- the magnitude of the contribution, it sounds like it's sort of beside the point.

THE COURT: It's only one factor; that's just it, it's only factor and it can't be viewed in the abstract. The contribution has to have some bearing on the claim that's being released, and the release of the claim has to be important to the case, not just a reward. The actual release has to be of some significance. The existence of the claim has to be an obstacle to the restructuring somehow in order to justify my reaching it. You've got nothing like that here.

MR. KIESELSTEIN: Well, Your Honor, what I would say is when someone, like these gentlemen, join a board with no real appreciation of how bad the situation is and they turn to me, as they did in this case, and say we didn't sign up for this, you know, why should we -- why don't we just exit stage left.

Do we want to incentivize people to just say, this

is too challenging, this is too hard, I didn't sign up for this, let me just get out of here as quickly as possible like a rationale human being would? But we want to incentivize people to get in there, roll up their sleeves and stay the course, particularly to the extent of what was done here. I'm sure there are cases --

THE COURT: People join audit committees, and they take as their protection their indemnification and insurance rights all the time. This idea that because a company is bankrupt, they have to have these third-party releases in addition is, frankly, nonsense.

All of these requests in my mind -- or not all of them -- most of these requests are nothing but pure over-lawyering. They are, as you yourself said, there are efforts to kind of provide additional comfort. I understand why people would like to have them. But in terms of the standards that I'm supposed to be applying under the governing case law, they don't even come close.

MR. KIESELSTEIN: So we think we have three factors, and it wasn't -- it's not a matter of prompting factors as what's clear and the post-Metromedia law makes clear, there's a variety of factors court's consider -- it's to your point -- about including. It's not an exhaustive list, it's not a prescriptive list.

So we have the magnitude of the contributions,

which I think by any fair assessment, was extraordinary. I think we have the indemnity obligation so that claims against these individuals are going to be claims against the reorganized debtors precisely because the indemnity obligations are being assumed.

THE COURT: So what?

MR. KIESELSTEIN: That's one of the factors cited by Metromedia.

THE COURT: Well, why is it essential to this reorganization to bar those claims?

MR. KIESELSTEIN: I mean, again, essential, Your Honor, meaning the plans fails if you turn down those releases. If that's your standard, I'll stop talking because we can't meet the essential standard. Mr. Baron is not going to go back and organize a meeting of the board tomorrow and say, let's pull the plug on the plan and destroy all the value that's been created. That would be the act of a bad fiduciary, Your Honor.

But that doesn't mean they're not entitled to -- and I don't mean it in the sense of entitlement. I mean that they haven't earned, merited one of those rare situations where they are -- they have the release as an appropriate full measure of finality in exchange for the full measure devotion above and beyond that they gave in this case.

And the third Metromedia factor that we clearly hit is the widespread support for the plan. And, Your Honor, I want to go back to when we had the opt-in/opt-out discussion, which went about as well for me as this one is going.

And what Your Honor said there was, I'm not going to imply consent by silence. People get a big package, they're busy, they throw it in the circular file, they don't read it. So I'm not going to imply that they, you know, they made a conscious decision not to opt-out, so I'm not going to give you the benefit of the doubt on that one.

Here, it's the flip side of the coin. All these people were conspicuously notified in big boldface that, you know, if you vote for the plan, you give the release. If we don't get sufficient consensus, or whatever the words we used, we reserve the right at confirmation to seek third-party consensual -- non-consensual releases, and we'll provide evidence at that time. Okay? They got that. Are we implying from their silence that they were against it, because we didn't imply from their silence that they were in favor of the opt-out? So they all had full due process.

THE COURT: I thought what we were doing is what I was told to do in Metromedia, which was regardless of whether I have an objection, satisfy myself as to whether this is an appropriate exercise of a very narrow and

authority that I should only be exercising in extreme circumstances; that's what I'm doing. It has nothing to do with whether anybody objected.

MR. KIESELSTEIN: Okay.

THE COURT: And I have to say that the justifications that you have offered here seem to me to fall totally short of what's necessary under Metromedia.

MR. KIESELSTEIN: I'm hearing you say basically if it's not essential, it doesn't pass muster. If the plan's not going to blow up without it, it doesn't pass muster. Maybe I'm mishearing you, Judge, but that's what -- that's what I'm hearing.

THE COURT: That's certainly one of the things I'm supposed to consider, and I don't have anything close to that here. I don't even have any connection between the activities that were engaged in and the claims that you're seeking to get released.

As I say, you seem to treat it as thought it's like, I can give you a reward out of the pockets of people who aren't even sitting here by taking their claims away and freeing you from them. It's just crazy. I think it's just crazy.

MR. KIESELSTEIN: Okay. That's probably a good place for me to stop at crazy.

THE COURT: All right, yes.

MR. MAZA: Alan Maza from the SEC. May I address the Court?

THE COURT: Yes.

MS. DOYLE: Your Honor, before he addresses the Court. Lauren Doyle, Milbank, on behalf of Mercuria. May I take another stab, although I've heard what you've said?

THE COURT: Go ahead.

MS. DOYLE: Thank you. Again for the record, Your Honor, Lauren Doyle from Milbank on behalf of Mercuria. I've completely heard what you said, and I don't want to discredit any of it. I just want to take a slightly different stab at the concept of truly unusual circumstances and whether the injunction plays and the words from Metromedia being, an important part in the debtor's reorganization. So I would argue that Mercuria's role in these cases is truly unusual circumstances.

THE COURT: I think what I'm being asked is, why the particular release that's being sought is an important part of reorganization; not whether other things that Mercuria did, which presumably it did for its own economic interest, were important to the reorganization.

MS. DOYLE: If I may, if I could start with why they were -- what they did and then get to the claims, I think I'll be able to make the connection.

So starting sort of with the concept of what

Mercuria did, right. This was a company that was on the brink of liquidation. It was on the brink of collapse multiple times, beginning from March of last year all the way up until the petition date, and some would argue, even after the petition date, right.

So when Mercuria came in in the summer, it basically provided essential trade financing that would have -- that ultimately prevented the company from collapse at that time. Then it went on on another sort of effort to save the company and prevent total liquidation, replaced the prepetition lenders and bought out that loans and provided another 30 million of incremental value to bridge this company to a Chapter 11 reorganization process.

THE COURT: But it was making loans that it thought would pay off and investments that it thought would be profitable.

MS. DOYLE: Absolutely.

THE COURT: It wasn't like a firefighter charging into the World Trade Center.

MS. DOYLE: Absolutely, and I don't mean to take away from the fact that there is always the business interest in making loans. And I'm going to get to the claims, because the claims that have been raised and the claims that we're concerned about, completely and directly tie to the actions Mercuria took during that time.

THE COURT: So what the debtor mentioned was if somebody wants to sue you based on the pre-bankruptcy loans and agreements you made. I've already told you I'm going to not allow people to sue you for the transactions I've approved. So if somebody's got a claim against you based on those pre-bankruptcy agreement, and I'm having trouble figuring out, given all the releases and exculpations and debtor releases that you have, who on earth that could be.

But let's assume somebody does. Why should your commercial activities during this bankruptcy case, however helpful they might have been, why should that entitle you to release of those other claims?

MS. DOYLE: Because those -- the direct claims, and I realize that Your Honor has already taken care of the situation with respect to debtor claims and derivative claims.

But to the extent that there were direct claims that the committee or noteholders were asserting at the beginning of this case with respect to actions taken by Mercuria to effectively keep this business from liquidating that led to an enormous auction process, that led to enormous value for creditors, all of which if they hadn't done any of that there would be no reorganization, there would be certainty of Chapter 7, those are the direct claims that if somebody, related to their prepetition activities,

that is somebody wanted to create nuisance value, we don't think there's any value, but they want to create nuisance value.

If they wanted to sort of engage in discovery and bring frivolous claims, Mercuria would have to fight those claims. They'd have to fight that litigation. That's a cost that after everything they've brought to the table, they shouldn't then have to continue to face post-emergence.

THE COURT: How do I know that they're nuisance claims?

MS. DOYLE: I would argue that you had an estate, two estate fiduciaries investigate these claims and determine that there was nothing there to merit.

THE COURT: I don't usually issue declaratory judgments unless I have two parties to the issue in front of me and an actual controversy; that's basically what you're asking me to do here. You're asking me to decide whether somebody's unasserted claim would be worthless enough that I should go ahead and get rid of it on the theory that it would just be a nuisance.

MS. DOYLE: I'm not arguing that you should get rid of it just because --

THE COURT: What if it wouldn't be a nuisance? What if there was real merit to it; why should I bar that?

MS. DOYLE: Because, Your Honor, that is the

prepetition acts related to the debtors that Mercuria took. If there's a direct claim, it has to be related to the debtors, right, that that's all the scope of these releases go to.

THE COURT: And if they did something wrong pre-bankruptcy that actually hurt somebody that they've got a claim for, why should I throw that away?

MS. DOYLE: And that's the exchange of value. That's where Mercuria has stepped in and has agreed to pay administrative expenses.

THE COURT: What value has that hypothetical plaintiff gotten in exchange for that claim?

MS. DOYLE: If it's at AMPNI, it's gotten recovery, our pro-rata recovery on the 40 million that was contributed to AMPNI, to the parent. It's gotten an interest in the litigation trust where other claims have been channeled.

If it's at the non-debtor subsidiaries, it's effectively had its claims paid in full, which is why I suggest that there's -- it's potentially nuisance value, especially at that level, because they've had their claims paid in full, so what possible harm could they have from the prepetition transactions.

You've got equity holders who are also going to recover in their order of priority from the litigation

trust, and that's all a result of the financial commitments that Mercuria made to these estates.

THE COURT: Okay.

MS. DOYLE: Thank you, Your Honor.

MR. MAZA: Thank you, Your Honor. Al Maza from the SEC. Of course, we echo what Your Honor has presented as his concerns, and the SEC staff has identical concerns. We don't identify this case as we're extraordinary, but I'd like to correct the record somewhat.

The shareholders actually are not getting anything under this plan. Yes, on paper, they are, but they will have to hope that the unsecured convertible noteholders will get a full payment under the absolute priority rule until they see a dime. Essentially, what they're getting is the right to go after D&O policies, which they could have gotten outside of this bankruptcy.

This bankruptcy does not improve their position at all. And, in fact, what this Chapter 11 plan contemplates is a worsening of their position. Because if there would have been a Chapter 7, they would have still gotten nothing, been able to go after D&O policies, and also not be stripped of these significant rights, direct claims.

As Your Honor mentioned, there has been no identification, specific identification, of the claims. The other concern, which is kind of been glossed over is, this

debtor left the disclosure statement hearing under the guise that this was an opt-in. They filed an amended plan with the proviso --

THE COURT: Well, they left with the idea that it was opt-in because I kind of made it that way.

MR. MAZA: I understand that.

THE COURT: It certainly wasn't the way they wanted to.

MR. MAZA: No, no, it wasn't, and we greatly appreciate Your Honor's intervention on that issue. Essentially what I'm saying is, how integral are these releases to the plan that it plan is then solicited with no identification. The only way we know that Mercuria and the three directors are seeking this non-consensual release is basically Friday when declarations are filed, that these are the parties. Until then, it's basically, you know, mystical who are these -- who's being bound by this.

Now, is it really fair to expect any shareholder to say what the SEC did in this case, you know what, there is the possibility somebody's getting a non-consensual release here. We better take the time and the effort to file a potential objection with the Court. I mean, that alone sets this up for a situation of even a due process concern.

But then going back, we believe that for all the

reasons Your Honor stated, and I won't go over them, but they were ones we were going to state, that clearly extraordinary circumstances that would impact the estate. And the fact that Mercuria was going to go through with this plan regardless does not meet any standard that would justify this harsh treatment to all these shareholders, some of whom are not even aware of these circumstances that they are now going to be facing with release of these claims, or are they really coming out with any benefit.

The substantial contribution that Mercuria is giving is not really coming down to benefit those parties that are now going to suffer the burden of this extraordinary release. Okay, U.S. Trustee.

MR. MASUMOTO: Your Honor, just briefly. Once again, I think Your Honor has been even more effective than I would have been on the issues raised.

And as Your Honor knows, we're always concerned about the rare and unusual circumstance test that seems to be met in virtually every large case in the Southern District. And as I said, I believe Your Honor has more effectively addressed it than I possibly could, so I think I'll quit while I'm ahead.

THE COURT: Does anybody else wish to be heard on the release issue? I have somebody in the back.

MAN 1: My name is (indiscernible), a holder, 1000

equity shares in (indiscernible), and under this plan, they're going to be cancelled. Mercuria and the new board of directors should not get releases upon the requests that have been made here.

They should earn those releases, with, like, litigation trust attorneys should diligently pursue Dimitris Melissanidis to the gates of hell for what he has done here and for what he's done to the economy of the Greek economy. This is one of the only successful businesses in the area. And now, Mercuria's pulled out their executive facility from Athens and Piraeus, and there's nothing there for the Greek people and there's nothing here for the shareholders.

Mercuria and the new board of directors have to earn their right to releases. They have to make misfeasance actions against the old board of directors and theft actions against Melissanidis, the director of corporate development and major shareholder, 22 percent. They have to go after those guys without exception and diligently. And if they do that, they will get their releases. And that's all I have to say about it. Thank you.

THE COURT: Thank you very much. Anybody else? All right. Give me five minutes to look over my notes and then I'll give you my ruling on the releases. Okay?

[BREAK]

THE COURT: Please be seated. All right, I'm

going to make my ruling on the release disputes. Bear with me because I'll be referring back and forth to various notes. I will ask the debtors to obtain a transcript and to submit it to me so that I may clean up the inevitable places where I inadvertently misspeak, and also so that I can insert citations.

I have a number of citations I will refer to, but if I read every last word and citation point of every case that I will refer to given the collective billing rate in this office, I think it would be a complete waste of money. So I will refer to cases but leave out the detailed citations and include them later.

I have before me the Debtors' request that I confirm their Chapter 11 plan of reorganization. Objections have been filed by the Securities and Exchange Commission and by the Office of the United States Trustee regarding certain third-party releases that the debtors have asked me to impose on a non-consensual basis.

By way of background, the plan of reorganization in this case provides a number of protections to the debtors' directors, officers, and various other parties. These include both consensual and non-consensual releases.

First, the plan provides for various consensual releases that will be binding only on the following persons as releasors: creditors who were entitled to vote and who

voted in favor of the plan; creditors and holders of interests who elected to opt into the releases by checking a box indicating that they wished to grant the requested releases; and certain other parties who agreed to give releases in connection with the plan, including parties who consented to give releases through their joinder in a plan support agreement.

Second, pursuant to Article 9(b) of the plan, the debtors have agreed to release all of their own claims against a broad group of released parties. The releases by the debtors cover virtually any kind of claim that might have been asserted, although they do carve out certain defined litigation claims and securities law claims that parties wish to pursue.

The debtors' releases of their own claims will have the effect of releasing any derivative claims that creditors or shareholders might have filed with respect to the released matters and the plan so states.

I have received no objections to the consensual releases. I have received no objections to the proposed releases of the debtors' own claims.

It is often the case that a Bankruptcy Court is asked to enforce a debtors' own releases by issuing an injunction that prevents third parties from asserting claims that belonged to the estate and that were released by the

Debtors. These are sometimes described as third-party releases, but I do not think that is really an accurate characterization of what they are.

Injunctions of this kind are more properly described as injunctions against interference with the debtors' court-approved decisions about the disposition of claims that belonged to the Debtors. See, for example, MacArthur Co. v Johns-Manville Corp., a Second Circuit decision, confirming that it was appropriate to enjoin creditors from pursuing claims that belonged to the debtors and that the debtors had released.

Third, the plan in this case includes an exculpation provision that is meant to insulate court-supervised fiduciaries and some other parties from claims that are based on actions that the court supervised and that the court approved.

To some extent, these exculpation provisions are based on the theory that, as a matter of substantive law, court-supervised fiduciaries are entitled to qualified immunity for their actions. See In Re PWS Holding Corp., In Re API, Inc. and Pan American Corp. v. Delta Airlines.

The reported case law is thin, however, I think and for properly limited exculpation provision as a protection not only of the Court's authority over certain court-supervised fiduciaries, but also as to court-

supervised and court-approved transactions. See Iridium Communications Inc v. FCC, a Seventh Circuit decision, approving a plan provision that exculpated an entity that funded a plan from liability arising out of or in connection with the confirmation of the plan, except for willful misconduct.

If the Court has approved a transaction as being the best interests of the estate and the parties and has authorized the transaction to proceed, then the parties to those transactions should be not -- should not be subject to claims that effectively seek to undermine or second-guess the Court's determinations.

In this case, the proposed definition of exculpated parties includes not only the debtors, the committee and their respective advisors and employees, but also Mercuria, which is the acquiring party and the debtor-in-possession lender, the DIP agents and DIP lenders, the prepetition secured credit facility agents and lenders, and the unsecured notes indenture trustees.

In addition, the proposed exculpation provision in the plan provides generally that each exculpated party shall have no liability to anyone for any plain, quote, "related to any act or omission based on," end quote, the Chapter 11 cases, the restructuring support agreement, the disclosure statement, the plan, the plan supplement, or, quote, "any

restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the disclosure statement or the plan," end quote, all of which is subject to a general exclusion or claims that are determined in a final order to have constituted actual fraud, willful misconduct, or gross negligence.

I think as I said during argument that, to some extent, the wording of this provision is too broad. Certainly, for example, the exculpation provision should not bar the enforcement of contracts that were entered into in the course of the case and that were approved by the Court, but literally, that's what that language would do.

As I said earlier, I think an appropriate exculpation provision should say that it bars claims against the exculpated parties based on the negotiation, execution, and implementation of agreements and transactions that were approved by the Court.

The United States Trustee has objected to the inclusion of parties who are not estate fiduciaries. But I think that if the exculpation is limited, as described above, then it is not problematic, and it is appropriate for the reasons that I have stated.

So the releases in this case -- the plan in this case, excuse me, already provides for a number of consensual

releases that I have been told will cover 99 percent of the unsecured creditors; provides for broad release of the debtors' own claims, which thereby bars derivative claims; and it includes an exculpation, which under my rulings, protects people from the -- for their involvement in transactions that I have already approved.

In addition to all of the foregoing, however, the debtors have asked me to approve certain non-consensual releases that would be binding even if the releasing parties did not agree to provide such releases. These do not involve claims against the debtors themselves, and they are not claims owned by the debtors themselves, nor are they limited to claims that are derivative claims that are pursued in the name instead of the debtors.

They also are not limited to matters that occurred during the bankruptcy case or that this Court has supervised and previously approved. Instead, the proposed involuntary releases would encompass claims that, as a matter of law, are owned directly by creditors or stockholders, not by the debtors, and that relate to transactions and events that were not supervised and approved by this Court.

I am being asked to extinguish any direct claims that creditors and shareholders may own against certain parties who themselves are not debtors in these cases, and to do so without the consent of the persons whose claims are

being released.

The proposed releases and their beneficiaries are broadly described in the plan. But as I understand the debtors' current position, there are only two groups in whose favor the debtors proposed that non-consensual releases be provided. One group is Mercuria and its officers, advisors, et cetera. Mercuria, as I mentioned, provided prepetition credit to some of the debtors. It also is the acquiring party under the plan, and it provided the debtor-in-possession financing during this case.

The other group is made up of three individuals who joined the audit committee of the debtors' board of directors after May -- which year?

MR. KIESELSTEIN: 28th.

THE COURT: -- May 2018. The debtors asked me to rule that all claims that any creditor or stockholder may have against these entities and individuals that has anything to do with the debtors is to be released, barred and enjoined without the holders of the consent -- without the consent of the holders of those claims.

Some circuit courts of appeal have held that bankruptcy courts lack the power to grant nonconsensual third-party releases of the kind that the Debtors seek here. There are a number of citations, which I'll just refer to here and insert in the final opinion. Bank of New York

Trust vs. Official Unsecured Creditors Committee, Pacific Lumber; Resorts International, vs. Lowenschuss; Feld vs. Zale, Fifth Circuit; Lansing Diversified Properties vs. First National Bank, which is a Tenth Circuit decision.

Other courts of appeal, including the Second Circuit Court of Appeals, have held that bankruptcy courts have the power to impose involuntary releases, but that such involuntary releases should be imposed "only in rare cases." In Re: Metromedia Fiber Network, Inc., a Second Circuit decision.

Other courts have similarly held that bankruptcy courts have the power to impose involuntary releases but usually with similar cautions to the effect that such releases should be issued sparingly and only when absolutely needed. National Heritage Foundation, Inc. vs. Highbourne Fund, which is a Fourth Circuit decision; Behrmann vs. National Heritage Foundation, another Fourth Circuit decision; Class Five Claimants vs. Dow Corning Corp., a Sixth Circuit decision; Menard-Sanford vs. Mabey AH Robins, another Fourth Circuit decision.

Releases, when they are presented to me, and they are frequently presented to me, are often presented as though the approval an involuntary release is no big deal. I disagree. And in order to put the issue in context, it is worth pausing for a minute to note just what an

extraordinary thing it is for a court to impose an involuntary third-party release and how different that is from what courts ordinarily do.

A bankruptcy court has in rem jurisdiction over a debtor's property. Pursuant to that in rem authority, a bankruptcy court may dispose of claims against the Debtor -- excuse me, the estate itself. But third-party claims, by definition, belong to third parties. They are not property of the estate. The bankruptcy court has no in rem jurisdiction over them.

As a general rule, a bankruptcy court has no power to say what happens to property that belongs to a creditor or to a party in interest, see Callaway vs. Benton, a Supreme Court Decision in 1949.

It is often argued that bankruptcy courts have broad subject matter jurisdiction over proceedings that are related to a bankruptcy case as though imposing an involuntary release are somehow analogous to an exercise of the court's power to rule on a proceeding that is pending in front of it. But there are many problems with that reasoning and that analogy.

First, Section 1334 gives bankruptcy courts subject matter jurisdiction over proceedings that are related to a bankruptcy case. However, when third party releases are proposed there is really any proceeding pending

at all. Instead, the court is asked to exercise power over a potential claim for which no actual proceeding exists.

Second, Section 1334 just generally describes the scope of a bankruptcy court's potential subject matter jurisdiction. Subject matter jurisdiction not enough to give a court power over a litigation claim. Instead, the court needs to have, in addition to an actual proceeding, personal jurisdiction over the relevant parties. We're very accustomed, in the bankruptcy court and the bankruptcy process to giving creditors notice of things we propose to do. Yet in the context of a statutory in rem deposition -- disposition of the debtors' own assets, that is sufficient.

But we are not talking here about the disposition of the Debtors' own assets, or of any assets over which we have in rem jurisdiction. Instead we are talking about issuing a ruling that extinguishes one non-debtor's claim against another non-debtor.

In other contexts, the Supreme Court has made clear that as a matter of due process, notice is not enough to confer personal jurisdiction over a party, or over its claims, or to give the court power over those claims. Instead, a formal service of process is required. See, for example, Martin vs. Wilks, a Supreme Court decision in which the court held that a party seeking a judgment binding on another cannot obligate that person to intervene. Joinder

as a party, rather than knowledge of a lawsuit and an opportunity to intervene is the method by which potential parties are subjected to the jurisdiction of the court and bound by a judgment or decree. See also Chase National Bank vs. City of Norwalk, Ohio, a 1934 Supreme Court decision in which the Court held that the law does not impose, upon any person absolutely entitled to a hearing, the burden of voluntary intervention in a suit to which he is a stranger.

Third, even if there were a proceeding pending in front of me in which I had subject matter jurisdiction and personal jurisdiction, and in which a third-party claim was asserted, that would not mean that I would have the power to impose an involuntary release.

In the American system litigants have the right to assert claims so long as they meet pleading standards and Rule 11 standards. When a court has jurisdiction over a claim, that means the court has the power to resolve the claim on its merits. The Supreme Court has held that a court has no power to dictate settlement terms or to force parties to release their claims. See United States v. Ward Baking Company, a 1964 Supreme Court decision confirming that a court lacked authority to enter a consent judgment to which the government did not consent, and confirming that in the absence of the parties' agreement the court's power was limited to the resolution of the case on its merits.

Similarly, the Supreme Court has held that two parties cannot, by agreement between them, dispose of claims that belong to a third party. See Local No. 3 International Association of Firefighters vs. City of Cleveland, a 1986 Supreme Court decision. Instead, a claim that belongs to a third party may be resolved only through litigation on the merits or on terms to which the third party agrees.

Finally, we should not lose sight of the fact that when we impose involuntary releases we do not provide claimants with the due process rights they ordinarily would have. The Federal Rules of Bankruptcy Procedure require the commencement of adversary proceedings, with formal service of process, when a money judgment is sought against a third party or when a court is asked to rule upon a third party's interest in property, or when a court is asked to make a declaration of the third party's rights, or when a court is asked to enjoin conduct. But these procedures are not applied when third party releases are sought.

In such cases, the proposal is that a third party's property be taken, that a release be affected and a pursuit of a claim enjoined without any formal service of process that would make the third-party subject to the court please with respect to the relevant claims, and without the commencement without any formal legal action involving the relevant claims. Nor does the party, whose claim would be

taken, have any rights to discovery or any of the other rights that are afford to an ordinary litigant.

Instead, as the court noted in In Re: Digital Impact, an Oklahoma decision in 1998, a third-party release has the effect of a judgment against the claimant and in favor of the non-debtor that is accomplished without due process. In fact, when a court determines to award a third-party release in a bankruptcy case, it is often asked to do so based only on the merits of somebody's contribution to the reorganization of itself, rather than the benefits to be provided directly to the persons whose claims are being released. But even in those instances in which powers of eminent domain authorize an involuntary taking of property, due process requires that the claimant receive compensation that is based on the actual value of the property being taken and the compensation that that person has received. See, for example, First English Evangelical Lutheran Church, a Supreme Court decision in 1987.

We often even have the anomalous situation in which the beneficiary of a third-party release asks for broader protection than he or she could have obtained in his or her own bankruptcy filing. For example, and this is true here, too, debtors often seek to free to officers and directors from potential securities law claims. But under Section 523(a)(19) of the bankruptcy code, my abilities for

violations of the securities laws are not dischargeable so long as the violation results in a judgment or settlement either before or after the bankruptcy case is filed. We therefore have the odd situation where we are being asked to use an unwritten authority to release non-debtors from claims when the bankruptcy code would bar us from giving similar relief to a debtor.

The issues I have described above ought to illustrate just how extraordinary a thing it is for us to impose involuntary releases and why, as commanded by the Second Circuit in Metromedia, we should do so only in those extraordinary cases where a particular release is essential and integral to the reorganization itself.

Unfortunately, in actual process parties, usually ignore this portion of the Metromedia decision and seek to impose involuntary releases based solely on the contention that anybody who makes a contribution to the case has earned a third-party release.

Almost every proposed Chapter 11 plan that I receive includes proposed releases. Instead of targeting particular claims and explaining why the release of those particular claims is necessary, the proposed releases instead are usually as broad as possible in their scope. Parties rare identify any particular claim that they are even worried about or that has been threatened, and almost

never explain why the -- an order extinguishing a particular third-party claim is fair to the party whose claim is being extinguished. Instead, I am usually told that various people have made contributions to the process that have been important in producing a successful outcome.

Frankly, if this were enough then releases would never be limited to the rare and unusual circumstances that the court required in Metromedia. As I observed in the transcript from argument in the Fairway cases, which one of the parties cited here, and as I said earlier, third party releases are not a merit badge that somebody gets in return for making a positive contribution to a restructuring, they are not a participation trophy, they're not a gold star for doing a good job on your homework. Doing positive things, even important positive things in a restructuring case is not enough under Metromedia.

Nonconsensual releases are not supposed to be granted unless barring a particular claim is important in order to accomplish a particular feature of the restructuring. In the Residential Capital case that was cited to me, for example, there was a huge overlap between claims that Residential Capital was making against its parent company and claims that various other parties were making against the parent. In that case, the parent didn't want to settle the claims made by Residential Capital unless

the third party claims that essentially were the same were also barred. In that context, the court was able to make a determination as to whether the settlement with the debtor and the funds that would be made available on those same claims justified the third-party release.

Similarly, in Johns Manville, the court ruled that insurers should be freed from potential direct liability claims by third parties in order to induce them to contribute policy proceeds to a trust that would benefit those same claimants. The courts in those cases were able to assess the claims that were being released, to see the direct connection between those claims, and the contributions that were be made -- being made, to decide whether, in light of the contributions that were made specifically for the benefit of the claimants giving the releases, whether those releases were significant and also to determine that the terms of the restructuring in those cases really depended on those releases.

I don't have any of that here. I have only suggestions that Mercuria and the members of the audit committee did things that were positive to the process, but no suggestion that what they did provided a specific recovery to the people whose claims would be taken, or any evidence that would allow me to judge the value of the claims that would be taken away.

Parties often argue to me that claims being released are just potential nuisance claims so that I can go ahead and order a release without worrying that I'm doing anything that's really harmful to the releasing parties. But if the claims that are the subject of the proposed releases would be without merit, as people often argue, that begs the question of why should they be released at all?

The teaching of Metromedia is that releases should be given only when it is necessary and integral to a reorganization. By definition, it cannot be said that the release of a meritless or nuisance claim is essential or integral to anything. Getting a release may be a comfort the parties would like to have, releases are not supposed to be imposed voluntarily just to make people feel better. They're supposed to be ordered only when they are actually important and necessary to the accomplishment of the transaction before the Court.

Turning now to the particular releases that the Debtors seek in this case. For the most part the Debtors have not identified specific claims that they believe must be barred in order to enable the reorganization. Metromedia cautioned that the bankruptcy courts are to be particularly skeptical of broad and general releases that are not tied, in a demonstrated way, to something that the reorganization needs to accomplish. There are no particular third-party

claims identified here that, if pursued, would undermine the restructuring and the deals that are part of that restructuring.

As to Mercuria, the Debtors themselves have released their claims based on pre-petition activities. I also have approved an exculpation that covers transactions that I approved during the course of the bankruptcy case itself. Many of the parties in interest have released their claims against Mercuria and I'm told that 99 percent of the unsecured creditors have consensually released their claims against Mercuria.

The Debtors have cited to loans and to an exclusivity agreement to which Mercuria was a party prior to the bankruptcy case. But given that the Debtors have released their own claims, which has the effect of barring derivative claims, I am at a loss to understand what claim is left as to which Mercuria needs protection. The creditors of the entities to whom Mercuria made pre-bankruptcy loans are being paid in full. The indenture trustees, who represent the parent company's unsecured noteholders, have granted releases to Mercuria and as I noted, an overwhelming percentage of the individual noteholders have done so too.

The parties aren't clearly able to even to identify anything that is left. And when I'm left with the

suggestion that nobody can really think of anything, or certainly not anything that they think has merit, but that it is nevertheless somehow important to this reorganization to issue a broad release, frankly, in substance, this amounts to a suggestion that I should give releases unless I can come up with a good reason not to do so. I think that is the opposite of the approach that Metromedia commands me to take.

The governing case law requires me to consider the particular claims that are to be released, whether the releasing parties are otherwise getting recoveries on those released claims, and other factors relevant, not only to the contributions made by the proposed release parties, but also to the fairness of the releases from the point of view of the people upon whom the releases are to be imposed. See, for example, Dow Corning. If, as is the case here, the relevant claims and the owners of them cannot even be identified, then there is a failure of proof of the facts necessary to support the proposed involuntary releases.

As to the members of the audit committee, the Debtors have argued that they could be subjected to amended securities law claims based on certain events that occurred prior to the bankruptcy case. I am told that these would be without merit and that I should bar them to give the directors peace of mind as a reward for the service that

they provided during the case. However, I have no record in front of me that would support a conclusion that no reasonable claims could be asserted against the proposed releasees here.

I am told that the directors in this case had to navigate through many troubles and that they therefore have earned the right to be freed of litigation claims relating to pre-bankruptcy matters. Frankly, that just doesn't follow. There are plenty of officers and directors of non-bankrupt companies who have to steer their companies through difficult situations. I am sure that they would also like to dispose of potential litigation claims against them as a reward for the work that they have done. But that is not recognized as a ground on which to terminate litigation claims outside of bankruptcy. There is no reason why it should constitute an excuse to terminate litigation claims just because a company is emerging from bankruptcy.

If the argument is that the directors have done a spectacular job, then maybe they should ask for a bonus, and maybe they would be entitled to one. At least such a bonus would be payable by the entities for whom the relevant directors did their work. When the Debtors argue that the audit committee members have earned peace of mind here, they essentially are saying that the audit committee members should be given a bonus that would not be paid by the

Debtors, but instead would be involuntarily assessed against the third parties who own the release -- the claims to be released. Some of those might be shareholders who, as things stand, are likely getting no benefit from the plan and from the underlying work that allegedly justifies the releases.

This is not a proper way of rewarding good work. I do not mean to demean the work done by the members of the audit committee, I have no reason to doubt that they did exception work and that they faced extraordinary challenges. But as the courts held in Washington Mutual and in other cases that I will cite, they did what they were paid to do, and it doesn't mean that they're entitled to a release of third-party claims, particularly when those releases really are not necessary or important to the accomplishment of the restructuring transactions.

I have also been told that from the point of view of the audit committee members themselves, they are already the beneficiaries of indemnifications from the Debtor. So to the extent they have earned protections, they already have them.

Finally, some courts have justified releases of officers and directors on the ground that in the absence of such releases the officers and directors will assert indemnification claims. I have to say that I am at a loss

to understand how that is a justification to take away the rights that claimants may have to pursue claims that they own directly against the officers and directors.

Assume here, for example, that shareholders might have claims against the audit committee members. As to the Debtors, if the Debtors were liable against any similar claims, the Debtors presumably would argue that their own liabilities are subordinated under Section 510(b) of the bankruptcy code. If those claimants have the rights to recover from individuals, there's no reason why they should be deprived of those potential recoveries just -- and that doesn't change just because the Debtors have elected, for their own reasons, to affirm their indemnification obligations to those defendants.

To the extent that the directors have indemnification rights, it just makes clear that there's no reason why a release of the claims against them is necessary or important to the reorganization process.

For that reason, I will approve the consensual releases. I will approve a modified versus of the exculpation provision that I have described, but the request for additional third-party releases will be denied.

Okay? I assume that you nevertheless want the plan to be confirmed?

MR. KIESELSTEIN: Well, speaking for the Debtors,

we certainly want the plan to be confirmed. Obviously, we need to confirm that with the folks at Mercuria, who were also hoping to get the release that Your Honor is not willing to grant.

MS. DOYLE: (Indiscernible), Your Honor.

MALE VOICE1: Everyone is fine to go forward, Your Honor.

THE COURT: Okay. Very good. I have no other issues with confirmation. So we'll have to make changes to confirm what I've approved and not approved, and I'll have to see your confirmation order. I assume you should -- before I look at it you should fix it up to reflect the rulings I've made today.

MR. KIESELSTEIN: That we will certainly do, Your Honor. There is one more objection, though, that's still floating around.

THE COURT: Oh, I'm sorry, that's right. I forgot. The -- I worked so hard on this one I forgot the other one.

MR. KIESELSTEIN: And we appreciate it, Your Honor.

MR. WINGER: Your Honor, Ben Winger on behalf of the debtors. I'll try to be brief and cede the podium to the UCC and the individual members who have direct skin in this particular provision -- just 60 seconds of context and background. The provision that the UST finds objectionable

is Article 2(c) of the plan. It provides for the payment of individual committee members' reasonable fees and expenses. And this is a provision which gives life to an RSA term, which basically says verbatim the same thing. And that's a term that was agreed to by the RSA parties includes, Mercuria, the committee, and the debtors. From our perspective, we understand the UST has a Lehman issue with this particular provision.

We were trying to be transparent and not create the mischief that Lehman cautioned against. And, therefore, included this provision in the plan being particularly mindful of 1129(a)(4) in this Court's review of certain for reasonableness. So that is where we approached this particular provision, and I understand there are issues with respect to how claims are going to be characterized. And I'm going to let the UCC and the individual committee members take that, unless Your Honor has any questions just on the table (indiscernible).

THE COURT: Remind me, does the plan provide people with notice and an opportunity to object as to the amounts that are being sought and what does it do? Does it dispense with the need for my approval if there's no objection, if that's how it works?

MR. WINGER: The process that's laid out would involve notice to the U.S. Trustee, Mercuria, and the

debtors, to the extent there's an objection, that would be brought to Your Honor's attention. You would have ultimate review, if there's no objection, then it would move forward with (indiscernible).

THE COURT: All right. Who wishes to go first?

MR. QURESHI: Thank you, Your Honor, just for the record, Abid Qureshi, Akin Gump, on behalf of the committee. Your Honor, I did take some comfort in some commentary in the context of the (indiscernible) where Your Honor made the observation that as long as Mercuria is paying for things that's okay, and so that was in the context of Oaktree. And that is case here, Your Honor, none of these fees that were negotiated as part of the RSA discussions will have any impact on creditor recoveries. This is quite simply an agreed term of an overall resolution embodied in the RSA; whereas, part of those negotiations in the give-and-take of everything that was happening, Mercuria agreed to pay these fees. So, again, it having no impact on unsecured recoveries at all.

We think this is very distinguishable from what the situation was in Lehman. And as Mr. Winger's set forth, there is transparency here in that all of the parties and the Trustee will have the opportunity to review and take issue with the reasonableness.

THE COURT: Okay. Mr. Masumoto.

MR. MASUMOTO: Good afternoon, Your Honor. Brian Masumoto for the office of the United States Trustee. Your Honor, the parties are correct in that this provision is a concern to the U.S. Trustee, particularly since similar provisions in other plans are designed essentially to invoke the provision 1129(a)(4), they're elevating claims that would not normally be considered admin expenses into admin claims endorsed under that provision. And Lehman essentially addressed the circumstance where committee member professionals were to be compensated and authorized under 1129(a)(4) where the concerns, in our office, signed an order for claims for committee professionals to be elevated to an admin expense status, they must comply with the substantial contribution provision under Section 503(b). Here --

THE COURT: Why is that?

MR. MASUMOTO: I'm sorry.

THE COURT: Why is that?

MR. MASUMOTO: Because 503(b) provides that varying circumstances under which professionals or committee members can be compensated. And the criteria for that under Section 503(b)(3) and (b)(4) required the substantial contribution.

THE COURT: Right.

MR. MASUMOTO: So from our standpoint --

THE COURT: What you're saying is that Mercuria's going to make the payments?

MR. MASUMOTO: Yes, Your Honor. And I understand the attempt to sort of analogize this to the Oaktree substantial contribution circumstance. Here, just to reiterate the process issue, we do have concerns again. As indicated under the terms of the plan, the Court has no say in the initial approval because the Court will never be provided with the applications (indiscernible) records or any of that sort unless if -- unless there's a dispute. In fact, whether or not substantial contribution is met is something that the Court wouldn't even know about or be able to address unless there's an objection raised.

Now, in the reply memorandum that was filed by the debtor, it did insert a provision that indicates that the U.S. Trustee could raise the substantial contribution issue. But, again, under the terms of the plan, the procedure is within five days, the committee professionals can provide their invoices and with five days' notice to the parties, the U.S. Trustee and Mercuria -- I'm not even sure if the debtor gets to weigh in. But that's the only notice and without any hearing for which these fees would be provided. As we articulated or stated with respect to the substantial contribution for Oaktree, we believe that any such provision for substantial contribution should be pursuant to it and

noticed -- a notice and hearing with the full application including time records to be on file publicly and to be addressed by the Court.

The issue here also, as we see it, as being different from the Oaktree circumstance, is that what you have here are committee professionals who are performing work in the bankruptcy court. There's an exact statutory provision addressing the circumstances where such professionals can be compensated. We do not believe that an RSA agreement can contravene the requirements of the bankruptcy code and essentially be able to bypass the requirements that are set forth under the code. So otherwise the RSA becomes the same vehicle that the parties have used, the 1129(a)(4) provision to do, i.e., shoehorn claims that are not necessarily authorized under the bankruptcy code and indicate that by -- by separate contractual agreements, thereby not to be enforced by the planned reorganization.

Therefore, our office opposes any circumstances in which compensation to committee professionals, who have performed work in the bankruptcy case, should not satisfy the requirements under Section 530(b)(3)(d) and (b)(4) regarding the merits of the substantial contribution.

THE COURT: Okay. Mr. Qureshi, if I understand correctly, your position is that if it's not the estate, but

is instead the acquiring party who's making the payments then it's not a 503 issue?

MR. QURESHI: That's correct, Your Honor.

THE COURT: Isn't it still an issue under 1129(a)(4), which still requires that the payment be subject to my approval as reasonable?

MR. QURESHI: So, Your Honor, I think that this is probably characterized as essentially an agreement that was reached in the context of the RSA between the committee members and Mercuria, that Mercuria would pay those fees directly without impact on the estate. Mercuria did want to reserve for itself the ability to review those fees for reasonableness. And, for that reason, we needed to have essentially bankruptcy court jurisdiction retained over that issue to the extent that there might be a dispute.

THE COURT: Does not even telling me what they are and only presenting it to me if somebody objects really do what 1129(a)(4) contemplates?

MR. QURESHI: Well, Your Honor, if the issue is --

THE COURT: Subject to the possibility of a ruling if somebody objects, but there's -- really, under that procedure, there's probably in all likelihood a situation where it wouldn't even be presented to the (indiscernible).

MR. QURESHI: So, Your Honor, if the Court's concern is a due process one and notice, I'm sure that's

something that we can rectify. We'll note that --

THE COURT: You might have guessed that's kind of a big deal for me.

MR. QURESHI: I'm well aware of that, Your Honor. I would note that there are other provisions in the plan, and I'll the indentured trustees address those that deal with the indentures trustee fees. So, I think, arguably, we're talking here about the payment of fees, really for just one committee member, which will amount to, I believe, less than a $150,000. So in the context of things, it's not a large amount that we're talking about.

THE COURT: Okay.

MR. QURESHI: But certainly --

THE COURT: Well, why shouldn't -- why shouldn't we say that rather than only coming to me if somebody objects that people need to file their requests probably nobody will object. But if there is an objection, then we can sort out whether it needs to be 503 or different standards. But at least then, it's something that will be presented to me for approval, and we will have satisfied the criteria no matter what section applies. Okay?

MR. QURESHI: Very well, Your Honor. Thank you.

THE COURT: All right. Yes.

MS. DOYLE: Your Honor, for the record again, Lauren Doyle, Akin Gump, on behalf of Mercuria. I just

wanted to clarify the record as there's a lot of back and forth about what Mercuria's required to do and what we agreed to do pursuant to the RSA. In the terms of the RSA, it says that the plan will provide for the reimbursement of the committee member fees. So as to whether Your Honor approves that it's included in the plan or not is up to Your Honor, and we'll (indiscernible) by that resolution and the terms of the plan, but it's not a separate Mercuria obligation.

THE COURT: All right. I will leave for another day the decision of whether this is governed by Section 503 or somehow it is separate and governed by Section 1129(a)(4) without reference to Section 503 or whichever one it is, I think I need to approve it. So I'll just change that procedure, and then we'll keep our fingers crossed that nobody has any issues.

MR. CURCHACK: Good afternoon, Your Honor, Walter Curchack of Loeb & Loeb on behalf of U.S. Bank, one of the indentured trustees. I know the hour is late, and I think I know where you're headed, but nevertheless feel the obligation to take a shot at something because it was something that was of concern to the indentured trustees. There's a provision in the plan which hasn't been addressed, it hasn't been objected to, and it's Section Article 4(q) of the plan. It simply provides that the debtor

(indiscernible) organized debtors will pay the professional fees of the indentured trustees subject to certain conditions. This has been -- that was in the RSA, it was in the (indiscernible) statement, it was in the plan. It hasn't been objected to. It's not a 503(b) payment. And the purpose of it, frankly, is to avoid the need for the trustees to exercise their (indiscernible) liens. If those fees which, I think, everything will concede the business deal with Mercuria is going to pay those monies. And for the sake of simplicity, let's assume there were only bondholders here. The deal is $40 million goes to the bondholders, not $40 million less some amount.

THE COURT: Does the U.S. Trustee object to that provision of the plan?

MR. MASUMOTO: Your Honor, to the extent that any provision validated claim filed by a professional or other individual as an admin expense, that's a problem for our office. I believe that it falls under our concerns that (indiscernible) and the Lehman case. As indicated by Mercuria's counsel, he indicated that whatever the RSA is -- should be absorbed as part of the plan --

THE COURT: But isn't the effect of this provision the same as saying that unsecured creditors will receive $40 million plus whatever the fees of the indentured trustee are? The indentured trustee has a charging right at least

as to the noteholders.

MR. MASUMOTO: In other cases, you know, that's how claims have been settled. The idea is that there's a gross offer of recovery to account for whatever charges and fees that may exist. But from a standpoint of elevating a claim for professionals to an admin expense that, we believe, is -- contradicts the scope of the 1129(a)(4) and the (indiscernible) Lehman.

MR. CURCHACK: Again, Your Honor, this particular section does not elevate it to an administrative claim. It doesn't address it as an administrative claim at all. It's something that is really inapplicable. It's simply a question -- and even in Lehman even where there was a $26 million fee against billions and billions dollars of -- probably a smaller percentage than it is here. That issue's not present here because the issue is presuming the claim -- the agreed economic deal to the bondholders.

THE COURT: I understand the argument, but why don't you -- I think there's an argument under 1129(a)(4) that it's being paid under the plan I should rule it as reasonable anyway, so why don't you make your application. We'll find out, at that point, if there really is even an issue as to what standards we apply.

MR. CURCHACK: Well, frankly, the problem with that, Your Honor, is one of timing because it prevents the

plan from -- it prevents the indentured trustees from making the distribution or the full distribution to the holders on the effective date if they need to exercise the (indiscernible) so that's why it was built in and intended to be paid --

THE COURT: When do you contemplate the effective date will be and how long will it take you to make your application?

MR. CURCHACK: Most of the applications that are feasible have been provided to (indiscernible).

MR. WINGER: Your Honor, the target effective date is as soon as April 1st, and we would ask that these applications be made as soon as possible.

THE COURT: Okay. Do you have any objection to shortening the notice period for these applications?

MR. MASUMOTO: No, Your Honor.

THE COURT: Okay. So when can you have them ready?

MR. QURESHI: Your Honor, again, for the record, Abid Qureshi, Akin Gump for the committee, just so that we're all clear on process. I think what we can on behalf of the committee members and their respective professionals is -- I would think within, well, hopefully by Friday, but very quickly get on file -- essentially fee applications, not conceding that these need to be approved under 503(b),

but just to disclose the fees, everybody can review the fees for reasonableness, and to the extent anybody has any issues, all rights are reserved with respect to 503(b) and whether later a record needs to be put on under that provision or not.

THE COURT: Okay. And if they file those on Friday, can we agree to have a hearing on Monday the 1st to the extent there are any objections? You can make your objections orally. I won't need papers on this issue.

MR. MASUMOTO: I will defer to Your Honor (indiscernible).

THE COURT: Is that all right? Does that serve everybody's --

MR. MASUMOTO: Yeah, our rights are reserved, we'll argue that -- so (indiscernible).

MR. QURESHI: Your Honor, I think that's the issue is to the extent the issue is reasonableness -- well, we believe the circumstances will justify even though we're passing -- even passing over that (indiscernible) not being in dispute, Your Honor, is right will be the reasonableness of anything in this court. But substantial contribution it seems is not an appropriate part of this review, we're not anticipating for the indentured trustees on a substantial contribution allocation because we don't think it's necessary or called for. But simply filing for the record

the amounts of our fees for determination whether anyone objects to them is unreasonable given what's gone on in this case.

THE COURT: Well, are you willing to say that you aren't seeking to justify and on a substantial contribution and only on other basis?

MR. CURCHACK: I think I would say that I don't believe it's necessary, at this point, to satisfy that standard, and therefore, I would not expect to be able to put together an application by Friday that would comply with what I would view as the substantial contribution application which goes far beyond the reasonableness test that I think is appropriate under 1129(a)(4).

MR. QURESHI: Your Honor, might I suggest that -- I think perhaps the easiest way to proceed is we file the applications by Friday, have a hearing on April 1st to see if there is an objection. To the extent that there is -- that there are any objections with respect to reasonableness, those can be dealt with on the 1st. To the extent that there is an objection that these fees should be grouped up under 503(b), then I think it would be appropriate to reserve the rights of the parties so they can, at a later date, at a subsequent hearing put on the record, should they choose, to justify those fees under 503(b).

THE COURT: Okay. All right.

MR. MASUMOTO: Your Honor, again (indiscernible) reserve with respect to the arguments that we've raised as for the Lehman case, (indiscernible) procedure. We don't want our arguments to be weeded out (indiscernible) contribution.

THE COURT: I understand. I don't want to prejudice anybody's right to be heard, and I also don't want the tail to wag the dog here and for this to get in the way of an effective date.

MR. SOMERSTEIN: Your Honor, Mark Somerstein, Ropes & Gray, for Deutsche Bank Trust Company Americas. There's two indentured trustees (indiscernible). I think that the procedure actually does prejudice my client. The indentured -- the U.S. Trustee did not object to this provision. It was nowhere in their papers. They objected to a different provision. So I think it's unfair to give them an opportunity to argue that Article 4(q) now involves a substantial contribution requirement. That was never presented to the court until somehow this moment.

THE COURT: They didn't cite to that particular provision, but wasn't that clear in their objection?

MR. SOMERSTEIN: No, Your Honor, to the contrary, it was --

THE COURT: Are you a member of the committee?

MR. SOMERSTEIN: Yes. It was not clear at all, Your Honor, that they were objecting to that provision.

THE COURT: All right. Well, I'm going to require you to submit your application by Friday. We'll have a hearing on Monday to consider whether there's any issue as to reasonableness or any issue at all. If there still is an issue, at that time, as to whether you need to justify it under a different standard, I will consider whether I think that's true, and I will also consider your contention that the U.S. Trustee didn't make the objection. Well, let's get it on file and find out if we have any issue.

MR. SOMERSTEIN: Thank you, Your Honor. Of course, we reserve our rights to assert --

THE COURT: Everybody's reserved their rights.

MR. SOMERSTEIN: Thank you.

MR. QURESHI: Your Honor, on an unrelated point, again, Abid Qureshi for the committee. I just wanted the Court to be aware that the litigation trust has selected a trustee, and that trustee is Peter Kravitz of Province. And the trust advisory board has also been put in place, and that consists of three members, Patrick Bartels, Gene Davis, and Ray Wallander. Again, just wanted the Court to be aware of that.

THE COURT: All right. I will hear the issues relating to these fee applications on April 1st at 11:00.

And I would encourage you to let me know by then just what you're doing as to the Oaktree application and whether there's any agreement about who's paying what or whether I need to schedule further proceedings. Okay?

MS. DOYLE: Your Honor, I have one other point that we wanted to put on the record that was an arrangement that was worked out just in the time before we started this hearing. In terms of the -- what we would refer to "AMPNI," which is the parents of the debtors or the debtor parent. It has been agreed to between the debtors and Mercuria that only the agreements between the debtors and Tyler Baron, Donald Moore, and Ray Bartoszek, will be assumed pursuant to the plan, that there are -- we've been told that there are no other employment agreements and employee at -- that entity referred to as AMPNI. With respect to those employment agreements, notwithstanding the fact that they will be assumed, there are no payments that will need to be made under those employment agreements on a go-forward basis. That is all I have.

THE COURT: Except to the extent that there's indemnification obligations, I assume.

MS. DOYLE: The indemnification obligations under the law, whatever the bylaws say, not with any specific employment agreement.

THE COURT: Okay.

MR. KIESELSTEIN: That's a correct recitation, Your Honor. We don't believe there are any monies that would be owed. These are paid in advance, and the retention aspect was paid on the front end subject to a clawback which would no longer be applicable.

THE COURT: Okay. All right. Anything else that I have forgotten about that we need to do today?

MR. KIESELSTEIN: I don't think so, Your Honor.

THE COURT: Okay.

MR. KIESELSTEIN: I think we had a full afternoon.

THE COURT: All right. Thank you very much.

MR. KIESELSTEIN: Thank you.

MAN 1: Thank you.

(Whereupon these proceedings were concluded at 5:25 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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Date: March 28, 2019

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